United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED JUN - 8 1959
Joseph W. Stewart
CLERK

NO. 14,963

500

GEORGE M. WASHINGTON,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Bill Austin Services, Inc.
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Washington, D. C.
EX. 3-4944

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JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,963

GEORGE M. WASHINGTON,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

CRIMINAL DOCKET

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PARTIES: UNITED STATES vs. 1. PAUL S. MUNSON; 2. CLINTON JACOBS; 3. JAMES JACOBS; 4. FRANCIS L. WASHINGTON; 5. GEORGE W. WASHINGTON; 6. ERNEST WALKER; ATTORNEYS: U. S. Attorney DOUGHERTY; 1. Strouse J. Campbell Shoreham; 1. P. Ackerman - 1346 Conn. Ave., N.W., 2. Richard D. Gibbs, Colorado, 4. Robert A. Brown, Dupont Cir.; 5. H. L. Winston - Trans. Bldg., 6. M. M. Goldberg - Investment Bldg; G. J. No. 1. 1051-58; 2. Orig.; 3. ORIG.; 4. 1108-58; 5. ORIG.; 6. Orig.; CRIMINAL NO. 863-'58; CHARGE: HOUSEBREAKING AND LARCENY (22 DCC 1801, 2201, 2202).

DATE	PROCEEDINGS
* * * * * * * *	
1958 Nov 21	No. 5: ARRAIGNED, Plea NOT GUILTY entered; Defendant REMANDED to the District of Columbia Jail; APPEARANCE of Harold L. Winston entered and filed; Attorney Harold

DATE	PROCEEDINGS
	L. Winston present. HOLTZOFF, J. (Reporter-Williamson) Cert. filed.
	* * * * * * * * *
1959 Jan 7	No. 5: - GEORGE M. WASHINGTON, No. 6: -ERNEST WALKER: TRIAL RESUMED; same jury and alternate jurors; Alternate jurors discharged; VERDICT: Guilty as charged; Case is REFERRED to the Probation Officer of the Court; Defendant REMANDED to the District of Columbia Jail; Attorney Max M. Goldberg present. HOLTZOFF, J. (Reporter-Watson) Cert. filed.
	* * * * * * * * *
1959 Jan 16	No. 5: MOTION of DEFENDANT to set aside verdict and dismiss the indictment pursuant to T. 28, U. S. Code, Sec. 2255, filed. Cert. of Serv. (Prepared by Deft.)
	* * * * * * * * *
1959 Feb 6	No. 5: - GEORGE M. WASHINGTON: MOTION of DEFENDANT for New Trial argued and DENIED. MOTION to set aside verdict argued and DENIED; SENTENCED to imprisonment for a period of FOUR (4) YEARS to TWELVE (12) YEARS on Count 1; THREE (3) YEARS to NINE (9) YEARS on Count 2; said sentence by the counts to run CONCURRENTLY. Attorney Harold L. Winston present. HOLTZOFF, J. (Reporter-Byrholdt) Cert. filed.
	* * * * * * * * *
1959 Feb 6	No. 6: - ERNEST WALKER: MOTION for new trial argued and DENIED; SENTENCED to imprisonment for a period of FOUR (4) YEARS to TWELVE (12)

DATE	PROCEEDINGS
	YEARS on Count 1; THREE (3) YEARS to NINE (9) YEARS on Count 2; said sentence by the counts to run CONCURRENTLY. Attorney Max M. Goldberg present. HOLTZOFF, J. (Reporter-Byrholdt) Cert. filed.

[Filed November 21, 1958]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES

vs. [CRIMINAL NO: 863-58

#5 - George M. Washington CHARGE: Housebreaking & Larceny

PLEA OF DEFENDANT

On this 21 day of November, 1958, the defendant George M. Washington, appearing in proper person and by his attorney, Harold L. Winston, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

By direction of
Alexander Holtzoff
Presiding Judge
Criminal Court # 3

Present:

United States Attorney

By Fred McIntyre
Assistant United States Attorney

B. Williamson
Official Reporter

HARRY M. HULL, Clerk

By /s/ Irene B. Burrougen
Deputy Clerk

[Filed January 27, 1959]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

vs.

GEORGE M. WASHINGTON, : Criminal Action
ERNEST WALKER, : No. 863-58

Defendants.

Washington, D. C.

January 5, 1959

The above-captioned criminal action came on before the HONORABLE ALEXANDER HOLTZOFF, United States District Judge, and a jury, commencing at 2:00 p. m.

APPEARANCES:

On behalf of the Government:

WILLIAM A. DOUGHERTY, ESQ.,
Assistant United States Attorney.

On behalf of Defendant Washington:

HAROLD L. WINSTON, ESQ.

On behalf of Defendant Walker:

MAX M. GOLDBERG, ESQ.

* * * * * * * * *

3

P R O C E E D I N G S

THE DEPUTY CLERK: United States vs. George M. Washington and Ernest Walker.

* * * * * * * * *

16

DAVID JACOBSON

called on behalf of the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Dougherty:

Q. Would you tell us your name, sir? A. David Jacobson.

Q. And what is your occupation, sir? A. I am an owner of 1129 4th Street, Southwest, which is Jada, Inc. I am part of a corporation.

THE COURT: 1129 what street?

THE WITNESS: 4th Street, Southwest.

By Mr. Dougherty:

Q. And do you have a partner? A. Yes, I do.

Q. And what is your partner's name? A. My partner's name is Jack Schrier.

Q. And what business is this corporation in? A. This business is a liquor store and patent medicine.

Q. This address, 1129 4th Street, Southwest, that also is in the District of Columbia? A. That is correct.

17 Q. And your corporation, Jada, is licensed to do business in the District of Columbia? A. That is correct.

Q. Mr. Jacobson, may I direct your attention to the morning of August 19th, 1958, and ask you if you had occasion to go to your place of business and open it up in the morning? A. Yes, I did.

Q. What time was it that you arrived? A. I arrived at the store about 9:45 a. m.

Q. And could you tell his Honor and the ladies and gentlemen of the jury what you observed when you got there? A. When I arrived at the store I noticed that a lot of papers were lying on the floor. I noticed the cash registers were empty. I walked into the back of the store where the safe was kept. I noticed the safe had been moved around. The entire back room looked like a cyclone had hit it. I proceeded to go down to the basement, and in the basement, I found out that whoever it was that came into the place had knocked out the cinder blocks and in that way had entered the store.

Q. Did you notice anything missing from downstairs? A. Yes, quite a bit of the stock had been taken out.

Q. Could you give us an approximation of about how much of the stock

and what kind of stock? A. Yes. The stock had been --

18 THE COURT: I do not think an approximation will do, if you stand on the second count.

By Mr. Dougherty:

Q. Could you tell us how much of the stock was taken, Mr. Jacobson? A. Yes. The liquor stock that was taken out amounted to $5, 200. The cigarettes, jewelry --

THE COURT: $5, 200 of liquor?

THE WITNESS: Yes, sir. The drugs -- not the drugs, but the jewelry, the cigarettes, amounted to approximately $531. A total sum of $5, 731, I believe it was. That was after an inventory was taken.

By Mr. Dougherty:

Q. And how long after the time that this occurred did it take you to make this inventory? A. The insurance adjuster --

THE COURT: No; just listen to the question and answer questions and do not bring anything else in.

By Mr. Dougherty:

Q. About how long -- A. Approximately one day.

Q. And how much money was taken, actual cash? A. Actual cash was $281.

19 Q. And of all this property that was taken, who was its owner? A. Jack Schrier and David Jacobson.

Q. In other words, the corporation was its owner? A. Jada, Inc.

Q. Do you know either of the defendants? Do you know George M. Washington or do you know Ernest Walker? A. They don't look familiar to me.

Q. Did you ever give either of them permission to enter your store and take this property? A. No, I did not.

Q. Do you know if anyone else did? A. I am sure they didn't.

Q. Do you have a particular District of Columbia liquor stamp? A. Yes, we have.

Q. And it is the practice that each store has a different numbered stamp, is that correct? A. That is correct.

Q. What is your number, please, Mr. Jacobson? A. 9594.

Q. And could you explain to the ladies and gentlemen -- to his Honor and the ladies and gentlemen of the jury the general practice that you must go through with this District of Columbia liquor stamp?

MR. WINSTON: I object to that, your Honor.

20 THE COURT: What is the ground of your objection?

MR. WINSTON: Your Honor, I think that the witness is not qualified to state.

THE COURT: Objection overruled.

By Mr. Dougherty:

Q. Would you explain the practice, please?

THE COURT: You may answer the question.

THE WITNESS: Yes. The ABC Board, when it issues a license for a package liquor store, gives each store a number. That store is designated -- that number is designated to that store. That is the procedure.

THE COURT: Yes, but what does it mean? How are those numbers used?

THE WITNESS: I am not qualified to say on that, your Honor.

THE COURT: What do you do with that number in your store? That is what I am trying to find out.

THE WITNESS: Yes. We stamp each bottle of whiskey that comes into our store with that number.

MR. DOUGHERTY: May I have this marked as government's Exhibit No. 1 for identification?

(Broken whiskey bottle marked Government's Exhibit No. 1 for identification.)

* * * * * * * * *

By Mr. Dougherty:

Q. Mr. Jacobson, I show you what has been marked Government's Exhibit No. 1 for identification and ask you first to name the object, if you can. A.

21 This is a pint of Seagram's Seven whiskey.

Q. And can you identify that object? A. Yes, this is a bottle of whiskey bearing an ABC stamp from the District of Columbia and having imprinted on it the number 9594, which is the number of Jada, Inc.

Q. I think for the record you should state it's a broken bottle. A. This is a broken bottle.

Q. And is that your stamp? A. That is my stamp.

MR. DOUGHERTY: May I have this marked Government's No. 2, please?

(Jewelry box and contents marked Government's Exhibit No. 2 for identification.)

THE COURT: If you have a number of exhibits that you want to have counsel look at before you offer them, perhaps this might be a good time to take our mid-afternoon recess, so as to save time later.

MR. DOUGHERTY: Thank you.

THE COURT: We will take our mid-afternoon recess at this time.

(Brief recess.)

22

(Broken jewelry boxes marked Government's Exhibit No. 3 for identification.)

(Broken jewelry boxes marked Government's Exhibit No. 4 for identification.)

(Liquor tax stamps marked Government's Exhibit No. 5 for identification.)

By Mr. Dougherty:

Q. Mr. Jacobson, I show you what has been marked as Government's Exhibit No. 2 for identification and ask you if you would first tell his Honor and the ladies and gentlemen of the jury what the object is. A. This represents a set of jewelry consisting of a watch chain, a money clip, cuff links, tie bar, and also included in this was a wristwatch, which is not in here now.

Q. Could you identify that object? A. This object looks like the merchandise that we do carry at our store.

Q. Now I show you what's been marked as Government's Exhibit No. 3 and ask you first to describe what that is. A. These are broken boxes which at one time contained different jewelry sets. This has a price tag on it of $5.50, plus tax, which is my writing on it.

Q. And I now show you what has been marked as Government's Exhibit No. 4, a group of objects. Could you describe them, please? A. These are
23 broken boxes that also contained jewelry sets and were the merchandise that we carried at our store.

Q. And now I show you what has been marked No. 5 for identification and ask if you can describe and identify those objects. A. These are ABC liquor stamps, District of Columbia liquor stamps, bearing the number 9594, which are our stamps.

THE COURT: You say ABC liquor stamps. Do you mean Alcoholic Beverage Control Board?

THE WITNESS: Alcoholic Beverage Control Board. That's right, your Honor.

MR. DOUGHERTY: Your Honor, at this time I should like to offer in evidence Exhibits 1 through 5, please.

MR. WINSTON: I object to them, your Honor. There is no connection.

THE COURT: I am going to sustain the objection. I think you are premature. I think probably if you make out your case they will be admissible, but I think it is too early, too early a stage.

MR. DOUGHERTY: I have no other questions of the witness.

THE COURT: Moreover, there was no evidence -- Will counsel come to the bench, please?

(AT THE BENCH:)

THE COURT: You see, you have not -- perhaps you had a purpose in doing so or perhaps it was unintentional, I don't know -- but you have not shown when he last saw these. All you showed was that these exhibits were

in his store before the housebreaking.

When did he see them before seeing them in the courtroom? Did he ever see them between --

MR. DOUGHERTY: You mean the continuity? Is that what you mean, your Honor?

THE COURT: I did not understand you. What was your question?

MR. DOUGHERTY: Do you mean I haven't established a chain of continuity?

THE COURT: It is not a question of continuity of possession. Maybe you are going to show this some other way, but --

MR. DOUGHERTY: I will later connect them with the defendants.

Excuse me, your Honor.

THE COURT: Did he see them in the police station? Did he see them at headquarters? Is this the first time he has seen them since the robbery?

If this is the first time he has seen them, then it is of very little value. If he was shown them at the police station, that is a link in the chain.

It may be that you prefer to prove these links by some other witnesses, I don't know, but I just want to call it to your attention.

MR. DOUGHERTY: I appreciate that.

THE COURT: There are a whole series of missing links at the present time. Now, if you want to reopen your direct examination and ask him these questions, you may do so, but if not, that is your preference.

MR. DOUGHERTY: Thank you, your Honor.

(IN OPEN COURT:)

By Mr. Dougherty:

Q. Mr. Jacobson, could you explain to his Honor and the ladies and gentlemen of the jury when was the last time you saw these objects?

THE COURT: What objects? Give the exhibit numbers so the record will show what you are talking about.

By Mr. Dougherty:

Q. Previous to testifying here was there another place that you saw Government's Exhibit No. 1 that has been marked for that purpose for identification?

A. Exhibit 1 is the broken liquor bottle, wasn't it?

Q. When did you next see this -- did there come a time that you saw this --

THE COURT: Just a moment. Let me ask the question. You identified Exhibits 1, 2, 3, 4, and 5. When did you last see them before testifying today?

26 THE WITNESS: Which one, your Honor?

THE COURT: All of them. Did you see them at different times?

THE WITNESS: I saw Exhibit No. 2, which is the broken jewelry boxes, at the Fourth Precinct approximately four or five days after the break-in. The broken liquor bottle I didn't see until that time that we came to court the first time.

THE COURT: Where was that?

THE WITNESS: That was in this courtroom, sir. That was -- I don't remember the date on it.

THE COURT: Very well. What about the other exhibits, 3, 4, and 5?

THE WITNESS: Whatever jewelry boxes were there, the broken boxes, I saw all those at the Fourth Precinct.

THE COURT: I see. Very well. What about 5, the liquor stamps?

THE WITNESS: The liquor stamps were shown to me at the first trial that we had, your Honor.

THE COURT: Very well.

MR. DOUGHERTY: I have no other questions, your Honor.

THE COURT: Mr. Winston, any cross-examination?

MR. WINSTON: Yes, sir.

27 CROSS-EXAMINATION

By Mr. Winston:

Q. Mr. Jacobson, when you first discovered, as you testified, that your place had been broken into, what did you do? A. I notified the police.

Q. And after notifying the police did a policeman, an officer, come to your place? A. Yes.

Q. Or did you go to the precinct? A. No, a policeman came down, two

of them came down.

Q. And a few minutes ago you testified that a considerable amount of liquor had been taken out of the cellar, is that right? A. That is correct.

Q. You say that immediately or, that is, in the course of your examination of the store at the time, that you discovered that it had been broken into, is that right? A. I didn't know exactly the amount. I knew that a considerable amount of merchandise had been taken from the premises, and when a physical inventory was taken the amount that I stated was the amount of shortage that represented the amount of whiskey that was taken.

Q. When was that physical inventory taken? A. That was taken approximately within one day.

THE COURT: When was the preceding inventory taken?

28 THE WITNESS: Preceding inventory had been taken as of September -- I'm sorry, it's not September. Preceding inventory had been taken as of March 31st, 1958.

THE COURT: Does that apply only to the liquor or does it apply to all the merchandise in the store?

THE WITNESS: That applies to all the merchandise in the store.

THE COURT: So that you have no way, have you, of comparing what was in the store the night before, when you closed up, and what you found there the morning after the break-in?

THE WITNESS: When we take physical inventory we designate what part goes to drugs and sundries and what part goes as far as alcoholic beverages go. We do designate the two.

THE COURT: No, I am afraid you misunderstood the question. Have you any way of telling what disappeared during that night?

You have an inventory taken back in September and you have an inventory taken the day after or two days after the housebreaking. But in between merchandise comes and goes, does it not?

THE WITNESS: That is correct, sir.

THE COURT: Is there any way of determining what was there the night

before the break-in?

29 THE WITNESS: You mean accurately one hundred percent?

THE COURT: Yes.

THE WITNESS: One hundred percent, no, I don't think so.

THE COURT: You testified that $281 in cash was taken. How did you arrive at that?

THE WITNESS: We have $425 set up in our banks; there is $200 in two registers, which represents $400, and there is $25 in the front register. When we went to check the money we came up with $281 short.

THE COURT: Well, did anybody count the money the night before the store was closed?

THE WITNESS: Yes; the cash is counted every night.

THE COURT: Who counts it?

THE WITNESS: In this particular case my partner closed. He counted it.

THE COURT: I see. Very well. You may proceed.

By Mr. Winston:

Q. When you spoke to the police officers did you at that time -- that was not long after you discovered that the place had been broken into, is that right? A. That is correct.

Q. And at that time did you say anything to them about the amount or the dollar value of the liquor stolen? A. No, I did not.

30 Q. You say that a physical inventory was taken within a day after the discovery of this robbery? A. That is correct.

Q. Now, did you testify before the grand jury?

THE COURT: You may not ask that question. Proceedings before the grand jury are secret.

Well, I will let him answer yes or no, whether he testified before the grand jury. Did you testify before the grand jury?

THE WITNESS: Yes, I did.

By Mr. Winston:

Q. Now, you testified a few minutes ago that the amount of liquor, the dollar value, I will call it, of the liquor, was around $5,200? A. That is correct.

Q. Have you --

THE COURT: I am going to ask counsel to come to the bench.

(AT THE BENCH:)

THE COURT: Of course, I am not going to permit this witness to be interrogated concerning testimony given before the grand jury because neither the Jencks case nor the statute that limits the Jencks case extend to grand jury minutes. At least it has so been construed in other districts.

31 But I confess I am puzzled and I was puzzled through this witness' testimony, Mr. Dougherty, and that is why I asked you to come to the bench. The indictment alleges $1,000 worth of merchandise.

MR. WINSTON: Liquor.

THE COURT: No; $1,000 worth of merchandise.

MR. WINSTON: I'm sorry. Yes.

THE COURT: No; $800 worth of merchandise, $281 in money. He testified $5,200 worth of liquor. Now, that is more than just an ordinary variance. What is the explanation of that? Is there any?

MR. DOUGHERTY: Yes, your Honor. At the last trial this very point came up and I went into it thoroughly. I think the point will be cleared up --

THE COURT: Suppose you give me the answer.

MR. DOUGHERTY: As I understand it, your Honor, there was a difference in the time of the inventory. When the man who just testified first saw the store he had no way of finding out how much was taken except that he could judge by the eye that there were fifty-odd cases missing. But people came and they took an inventory. The police asked how much was gone. He said, "I cannot tell you until I check."

THE COURT: He said an inventory was taken within two days after the robbery, and the indictment was not returned until September 29. There is something strange about that. Moreover, I am not sure that you have a good

32 case of grand larceny so far because -- of course, you have a good case of petty larceny, provided you can connect the defendants, but you have to have some more proof of the value. The difference in the inventory value is not sufficient because the preceding inventory was taken a couple of months or a month before the housebreaking.

MR. DOUGHERTY: I can clear this up on redirect examination, your Honor.

THE COURT: Of course, the main thing is the housebreaking, and you have this difficulty. And also the $281, he did not count the money.

MR. DOUGHERTY: Mr. Schrier did, his partner.

THE COURT: Well, all right, but so far as he is concerned, his testimony is not enough to sustain a charge of grand larceny.

MR. DOUGHERTY: I agree.

MR. GOLDBERG: Your Honor, may we continue to interrogate him on the variance?

THE COURT: You have a perfect right to do that.

(IN OPEN COURT:)

THE COURT: You may proceed, Mr. Winston.

33 By Mr. Winston:

Q. When you were shown, Mr. Jacobson, this box with its contents, you said something to the effect that it looks like something in your store, is that right? A. I said it was similar merchandise to what we carried and it looked like merchandise that we have.

Q. Do you have any exclusive agency in this City of Washington for that type of merchandise? A. No, we don't.

Q. One thing more --

MR. WINSTON: Will you stand up, please?

(Defendant Washington stood.)

By Mr. Winston:

Q. This is the defendant George M. Washington. Have you ever seen him before today?

THE COURT: He did not testify to anything about these two defendants, so you are outside the scope of the direct examination.

MR. WINSTON: All right. That is all.

THE COURT: Mr. Goldberg, any questions?

By Mr. Goldberg:

Q. Mr. Jacobson, how long have you been in the liquor business, sir? A. Since September, 1956, in Washington, D. C.

Q. 1956, September? A. In Washington, D. C.

34 Q. Could you tell me, sir, whether or not the inventory that you made immediately after the robbery was a physical inventory of name brands used case lots? A. That is correct.

Q. And is that inventory available? A. That inventory is -- at the present time those records are with the insurance company.

Q. But the inventory is available? A. I suppose from the insurance company, yes.

THE COURT: I am going to interrupt you, if I may.

The break-in was on the 19th of August, was it not?

THE WITNESS: Some time between the 18th of August at 9:15 p. m. and 9:45 --

THE COURT: Will you state again when was the inventory last taken prior to that time?

THE WITNESS: March of '58.

THE COURT: March of '58. There was no inventory taken between March and August 19?

THE WITNESS: That is correct.

THE COURT: Very well.

By Mr. Goldberg:

Q. Could you tell me, sir, how many cases of whiskey would be necessary to accumulate a value of $5,200? A. Approximately between 100 and 115 cases.

35 Q. 100 and 115?

THE COURT: Did you count the number of cases that seemed to be missing?

THE WITNESS: Yes. We have merchandise that is broken merchandise and then we have merchandise that is in full cases. When we take our inventory --

THE COURT: No. On the morning of the burglary did you find any of the cases missing, or only broken lots missing?

THE WITNESS: We found mostly cases missing, full cases.

THE COURT: How many cases did you find missing?

THE WITNESS: Approximately 115, 120 cases.

THE COURT: Missing?

THE WITNESS: Yes, sir. I may also state that when the boys came in --

MR. GOLDBERG: Your Honor --

THE WITNESS: When whoever it was came into the place, the place was left completely open and they --

THE COURT: No; just confine yourself to answering questions. How many cases of liquor did you have altogether in the store before the burglary?

THE WITNESS: Well, we carry down in the basement anywhere from 150 to 175 cases, depending upon the time of the month.

36 THE COURT: How many cases were there when you arrived on the morning after the burglary?

THE WITNESS: Approximately 35 cases.

THE COURT: And all the others were gone?

THE WITNESS: The other cases were missing.

THE COURT: I see. You may proceed.

MR. GOLDBERG: Your Honor, the only objection I would like to make, I would like that stricken, "When the boys came in," because it wasn't responsive to your question.

THE COURT: Do not be so technical. That does not help matters.

MR. GOLDBERG: I have no further questions.

MR. DOUGHERTY: Just one other question, if I may.

REDIRECT EXAMINATION

By Mr. Dougherty:

Q. Mr. Jacobson, what was the value of this 120 cases of whiskey missing? A. Our inventory showed that we were approximately $5, 200 worth of merchandise missing.

Q. You mentioned Seagram's Seven liquor. What is the value per case of Seagram's Seven Crown liquor? A. Well, the average case of Seagram's Seven in the fifth lots, which is twelve fifths in a case, is approximately $40 a case.

THE COURT: Are you referring to wholesale or retail?

37 THE WITNESS: I am talking about wholesale.

By Mr. Dougherty:

Q. And how much would a case of pints cost? A. Approximately $52.

MR. DOUGHERTY: Thank you.

MR. WINSTON: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. DOUGHERTY: Melvin Shippy, please.

Thereupon,

MELVIN R. SHIPPY

called on behalf of the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Dougherty:

Q. Could you tell us your name, please? A. Melvin R. Shippy.

THE COURT: Get close to the microphone. Do not sit back, sit up straight. What is your name?

THE WITNESS: Melvin R. Shippy.

THE COURT: How do you spell your last name?

THE WITNESS: S-h-i-p-p-y.

By Mr. Dougherty:

Q. Mr. Shippy, as of the 18th of August, 1958, where were you living?

38 A. 458 K Street, Northwest.

Q. And what was your connection with the premises 458 K Street, Northwest? A. Landlord.

Q. Now, I direct your attention to the early morning hours of August 19th, about 12:30 a. m., and ask if you had occasion to be at 458 K Street, Northwest, within the District of Columbia? A. Yes, sir.

Q. And did there come a time when you saw either Ernest Walker or George M. Washington at these premises? A. Yes, sir.

Q. Did either one or both live at these premises? A. It was just one staying. That was Ernest Walker.

Q. And where did he live?

THE COURT: Who?

MR. DOUGHERTY: Ernest Walker, he said, your Honor.

THE COURT: Do not use "he" because there are so many people involved.

By Mr. Dougherty:

Q. Which defendant lived there? A. Ernest Walker.

Q. And in which room did Ernest Walker live? A. First floor, No. 1.

Q. Do you see Ernest Walker here in the courtroom? A. Yes, sir.

39 Q. Could you identify him, please? A. In the green jacket there.

Q. Sitting between the two attorneys? A. Yes, sir.

MR. DOUGHERTY: May the record show the defendant has been identified, your Honor?

THE COURT: The record may so show.

By Mr. Dougherty:

Q. Did there come a time when you saw George M. Washington on the evening or the morning of August 19th? A. Yes, sir.

Q. And do you see him here in the courtroom? A. Yes, he is sitting there on the end with the white sweater.

Q. The man in the white sweat-shirt at the end of the counsel table?
A. Yes, sir.

MR. DOUGHERTY: May the record show, your Honor, the witness has identified the defendant Washington?

THE COURT: The record may so show.

By Mr. Dougherty:

Q. Now, could you tell his Honor and the jury what you saw these two people, Ernest Walker and George M. Washington, doing that evening or that morning? A. Yes, sir. I had went out to the nightclub and when I was on my
40 way back to the house, I was right there in the walkway of the house, I was fixing to go in, and I seen them. They was carrying in whiskey into the house. And also while I was standing there they brought it back out and put it into the car.

THE COURT: They were carrying whiskey into the house?

THE WITNESS: Into the house, yes, sir.

THE COURT: And then?

THE WITNESS: And brought it back out and carried it to the car.

By Mr. Dougherty:

Q. Now, would you describe the objects you saw them carrying? A. It was pints of Seagram's Seven and Kentucky Gentleman.

Q. Were these bottles of whiskey in a case or were they carrying them loosely in their hands? A. It was in a case.

Q. How many times did you see them do this? A. Well, in all, I see them bring in about five and carry out about five.

Q. Did you see them both bring in five and both carry out five? A. No,
41 sir, it was included with the others; it was included with the rest of them.

Q. Did there come a time when you saw them go into Ernest Walker's room? A. It was Clinton Jacob's room, but they went in there, because Clinton was renting from me.

Q. Did there come a time when George Washington went into this room?
A. Yes, sir.

Q. And Ernest Walker went into the room? A. Yes, sir.

Q. Did you see what they did after they got into the room? A. No, sir; I was on the outside. I didn't see what they done when they got in the room, but I was on the outside right at the window.

Q. Were there any other people in the room? A. In all there were five of them.

Q. And could you hear what these people were doing? A. I mean I could hear some voices in there talking at that time, yes, sir.

Q. How long did George Washington and Ernest Walker stay there, if you know? A. Well, I say -- when I got to the house there they was carrying the whiskey in and carrying it out; I say a little better than around five minutes
42 inside there.

Q. I mean after they went in the room. A. Yes, sir.

Q. Do you have any knowledge as to how long they stayed? A. Well, I say about that time.

THE COURT: About how long?

THE WITNESS: I say about five minutes, and then they went out back to the car. That's when they drove off.

THE COURT: They stayed there about five minutes?

THE WITNESS: Yes, sir.

By Mr. Dougherty:

Q. Did there come a time when you saw them come back to the house? A. The next time that I seen them, I didn't see them when they came back to the house but I seen the one that was renting from me, Clinton Jacobs, I saw him that morning around about six o'clock.

Q. I show you what has been marked Government's Exhibit 1 and ask if you can identify this object. A. Yes, sir; this is the bottle that I picked up was throwed on the outside of the front window there.

Q. It was thrown on the outside of the front window? A. Yes, sir.

Q. Where did you find it? A. I found it right outside the window because when I picked it up this stamp was on it, and the stamp that was on it was 595
43 -- 9594.

Q. What did you do with the bottle after you picked it up? A. I taken the bottle down in the basement and there was a tray down there and I laid it up on the tray in the basement, down in the basement.

Q. Now, did there come a time when you gave that broken bottle to somebody? A. Yes, sir.

Q. Whom did you give it to? A. There was a detective there and I gave it to him.

Q. Now, I show you what's been marked Government's Exhibit No. 2 for identification and ask if you have seen this object before. A. Yes, sir; this here came out from under the bed mattress.

THE COURT: What was his answer? What was your answer?

THE WITNESS: Yes, sir; this came out from under the bed mattress.

THE COURT: It came out of what?

THE WITNESS: Out from under the mattress, the bed.

MR. WINSTSON: I didn't hear that, sir.

THE COURT: Will you read the answer?

44 (The Reporter read the answer as follows:

"Yes, sir; this came out from under the bed mattress."

By Mr. Dougherty:

Q. And which room did this come from? A. No. 1.

Q. And whose room is that? A. That was Jacobs' room.

THE COURT: Whose room?

THE WITNESS: Jacobs, the one that rented, Clinton.

By Mr. Dougherty:

Q. And is that the one that Ernest Walker stayed in? A. Yes, sir.

Q. Now, I show you what has been marked as Government's Exhibit No. 3 and ask if you can identify that. A. Yes, sir.

Q. Where did you see this before? A. I seen some of that was there and some of it was out in the trash.

Q. Talk to his Honor so he can hear you.

THE COURT: Speak through the microphone.

THE WITNESS: Some was there and some in the trash.

By Mr. Dougherty:

Q. Now, I show you what's been marked as Government's Exhibit No. 4 and ask if you have seen this before, that group of objects? A. Yes, sir.

45 Q. Where did you see those objects before? A. This here was in the room.

Q. What room? A. In room No. 1.

Q. Now, I show you what's been marked as Government's Exhibit No. 5 and ask if you can identify those objects? A. Yes, sir; this here was down in a suitcase.

Q. And where did -- have you seen those before? A. Yes, sir.

Q. Where was the suitcase in which you saw them? A. It was under the bed.

Q. In what room? A. No. 1.

THE COURT: How did you come to see all these things in the room? Did you go into the room?

THE WITNESS: He had a summons there to move. He had been there about eight weeks and he had a summons to move and they had brought it, and in the meantime when they brought him this summons --

THE COURT: No; suppose you just listen to my question and answer it. How did you happen to see all these things in the room?

THE WITNESS: Well, that's what I am getting to.

46 THE COURT: What's that?

THE WITNESS: Yes, I'm getting to that.

THE COURT: No, I do not want all those details. Did you go into the room and see them?

THE WITNESS: No, sir, I didn't go into the room right then, but when the detective was there, that's how I seen them, when they was in there getting it.

THE COURT: I see. You have answered my question.

MR. DOUGHERTY: I have no other questions of the witness. Thank you.

THE COURT: Mr. Winston, any cross-examination?

CROSS-EXAMINATION

By Mr. Winston:

Q. Mr. Shippy, you said a few minutes ago that you saw my client, Mr. George Washington, carrying something in and out of the place at 456 (sic) K Street, is that right? A. Yes, sir.

Q. Had you ever seen him before? A. I have seen Mr. Washington over there, but I mean I didn't know him personally, but I have seen him. But Ernest Walker was staying there with Clinton Jacobs.

Q. But Mr. Washington was not staying there? A. No, sir.

Q. And you had never seen him before? A. Yes, sir, I said I have seen him before, but I don't know him personally, but I have seen him and his
47 brother before.

Q. Who is his brother? A. Washington.

Q. Have you ever been convicted of a crime? A. No, sir.

THE COURT: Just a moment. Will counsel come to the bench, please?

(AT THE BENCH:)

THE COURT: Have you a record that he has been convicted?

MR. WINSTON: No record, sir.

THE COURT: Then you have no right to ask such a question.

MR. WINSTON: I'm sorry.

THE COURT: That is an unethical question to ask. Where are you from?

MR. WINSTON: I don't understand, sir.

THE COURT: Did you practice law elsewhere?

MR. WINSTON: Yes, sir.

THE COURT: Where?

MR. WINSTON: Hartford and New York.

THE COURT: The reason I asked you is this: In New York they permit such a question. That is probably where you learned it. But we do not. In New York they permit a question out of the blue, Have you ever been convicted
48 of a crime? And the witness says no. We do not permit that question

unless you have a record because it is an aspersion on a person, even if he says no, because the jury might say, "Oh, there must be something to it."

MR. WINSTON: I'm sorry.

THE COURT: That is all right. I know it seemed to you irrelevant when I asked you where are you from. I thought you were from New York when you asked that question because that question is permitted in New York. We do not. We consider that unethical. But you are excused because you are used to the New York practice.

(IN OPEN COURT:)

MR. WINSTON: I have no further questions.

By Mr. Goldberg:

Q. Mr. Shippy, how long have you been the landlord at 458 K Street, Northwest? A. Well, I been staying there for just about four years and I come to be the landlord there on the 27th day of July.

Q. You bought the building on that day? A. No, sir; I said I had been staying there about four years and I come to be the landlord on the 27th day of July, 1958. Mr. Joseph Katz, he was the owner of it.

Q. And you are ostensibly the manager, or are you the owner? A. No,
49 sir, I am just the manager there.

Q. What were your duties there, sir? A. I was to keep the place cleaned up and collect the rent and rent out apartments.

Q. Then you actually were not the landlord? A. I wasn't the one that owned it.

Q. Now, how long have you known Mr. Ernest Walker? A. Well, he was there, I guess, just about, I guess it was just about two months, I reckon.

Q. How many times during that period of two months have you had occasion to see him? A. Well, I saw him just about every day.

Q. How often every day? A. Well, every time -- see, it was during the summer and every time the window would be raised I could pass along and see them in there.

Q. And is it your testimony that Mr. Walker lived at 458 K Street,

Northwest, with Clinton Jacobs? A. Well, he had been staying there, like I said --

Q. I didn't ask you that.

THE COURT: Let him finish his answer.

THE WITNESS: Sir, he had been staying there for two months. I don't know whether he had moved there, but he was staying there exactly two months when this happened.

50 By Mr. Goldberg:

Q. Mr. Shippy, when you say staying there, do you mean staying there day and night? A. Yes, sir, that's what I mean.

Q. From your testimony before, it appeared that he had had another room in your building. Is that true? A. No, sir; there wasn't but one room there. That's the only room that is in that building is No. 1. The rest of the rooms in there is apartments.

Q. And it is your testimony that Ernest Walker lived in this one single room with Clinton Jacobs? A. He stayed in this one single room with Clinton Jacobs. And after this happened, since August, his father moved there from somewhere --

THE COURT: You have answered the question. Don't go ahead.

THE WITNESS: But he stayed there the second time.

By Mr. Goldberg:

Q. Now, on the evening of August 17 is it your testimony that you saw Mr. Ernest Walker taking something into this building? A. Yes, sir.

THE COURT: Did he say August 17?

MR. GOLDBERG: I'm sorry, your Honor.

THE COURT: That is not according to my notes. Was it the 17th?

51 MR. DOUGHERTY: Some time between the last part of the 18th and the 19th, your Honor.

THE COURT: Did the witness mention the 17th?

MR. GOLDBERG: No, your Honor, it was the 18th. I'm sorry. I stand corrected.

By Mr. Goldberg:

Q. Is it your testimony that on the evening of the 18th you saw Ernest Walker take something from an automobile and bring it into the building?

A. Yes, sir.

Q. And what was that? A. That was whiskey.

Q. Now, what did you actually see him carry? A. They was bring in -- it was Seagram's Seven and Kentucky Gentleman.

Q. Did you see loose bottles of whiskey being lugged into the house?

A. I seen them carrying that in, but I heard them talk it was whiskey.

THE COURT: What were they carrying, cases or loose bottles.

THE WITNESS: It was cases, sir.

By Mr. Goldberg:

Q. Did you have occasion to look into the boxes? A. No, sir, I didn't.

52 Q. Did you see anything inside any of the boxes carried into that building that night? A. Well, I heard them talking. That's why I said it was whiskey.

THE COURT: Just answer questions.

By Mr. Goldberg:

Q. Did you see anything carried in the boxes being taken into the building, sir?

(Brief pause.)

THE COURT: I think he has already answered your question.

By Mr. Goldberg:

Q. Then actually you don't know what were in the boxes? A. I said it was whiskey, sir --

THE COURT: Just a moment. He has answered your question. You can make an argument on the basis of his answer instead of arguing with him.

By Mr. Goldberg:

Q. Mr. Shippy, one other question, sir, and that is this: Did you see anyone else in the area of this house on the evening of August 18th beside Mr. Washington, Mr. Walker? A. Did I see anybody with them?

Q. Yes. A. Yes, sir.

53 Q. Now, among these people you saw did you see a lady? A. No, sir, I didn't.

MR. GOLDBERG: No further questions.

MR. DOUGHERTY: No redirect. Thank you, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. DOUGHERTY: Detective Verrier, please.

Thereupon,

FRANCIS VERRIER

called on behalf of the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Dougherty:

Q. Would you tell us your name and assignment, please? A. Francis Verrier, assigned to No. 4 Precinct, Metropolitan Police.

THE COURT: How do you spell your last name, Officer?

THE WITNESS: V-e-r-r-i-e-r.

By Mr. Dougherty:

Q. What is your occupation, please? A. I am a police officer, Metropolitan Police Department.

Q. And where are you assigned? A. No. 4 Precinct.

Q. And around the 21st of August, 1958, were you so assigned? A. I was.

54 Q. And on or about that date did you have occasion to go to the premises of 458 K Street, Northwest, in the District of Columbia? A. I did.

Q. Could you tell us what you did when you got there? A. I talked to Melvin Shippy.

Q. That is the man who has just finished testifying? A. Yes, sir.

Q. And as a result of talking --

THE COURT: This was not brought out: What is your rank, Officer?

THE WITNESS: Detective, your Honor.

THE COURT: You are a precinct detective?

THE WITNESS: Just detective, sir.

By Mr. Dougherty:

Q. And as a result of talking to Melvin Shippy what did you do? A. We went to the rear of 458 K Street and I looked in some trash barrels that were there, sir.

THE COURT: And you did what?

THE WITNESS: Looked in some trash cans that were there.

By Mr. Dougherty:

Q. Now, Detective Verrier, I show you what has been marked Government's Exhibit 1 for identification and ask you if you can identify that
55 object. A. I can.

Q. Would you tell his Honor and the ladies and gentlemen of the jury what it is and where you saw it last? A. This is a broken bottle of Seagram's Seven Crown whiskey, bearing the stamp number 9594. I recovered this in the cellar of premises 458 K Street, Northwest. It was shown to me by Melvin Shippy and he told me certain things about this particular bottle.

THE COURT: You recovered it in the cellar, did you say?

THE WITNESS: Yes, sir.

By Mr. Dougherty:

Q. Did there come a time when you gave this object to -- Government's Exhibit No. 1 -- to me? A. There did.

Q. And have you seen it since? A. No, sir, I have not.

Q. Now, I show you what has been marked as Government's Exhibit No. 2 and ask if you can identify this object. A. Yes, sir, I can.

Q. What is it, please? A. This is a jewelry box containing two pair of cuff links, a money clip, key chain and two tie pins.

56 Q. Where did you first see that object? A. That was found in the front room of premises 458 K Street, Northwest. It was under a mattress in that room.

Q. I show you what's been marked as Government's Exhibit No. 3. Can

you identify that? A. Yes, sir, I can.

Q. What is it and where did you first see it? A. These are boxes with a tag with the numbers $5.50 plus tax on it. This was found in the trash can in the rear of premises 458 K Street, Northwest.

Q. And did there come a time when you gave those last two objects to me? A. There did.

Q. Now, I show you what has been marked as Government's Exhibit No. 4 and ask you if you can identify that group of articles. A. These boxes were found also in the trash in the rear of premises 458 K Street, Northwest.

Q. And I show you what has been marked as Government's Exhibit No. 5 and ask if you can identify those objects. A. These are stamps bearing the number 9594. They were found in a green suitcase in the front room of premises 458 K Street, Northwest.

Q. What kind of stamps are they, please? A. They're ABC stamps. They're on whiskey bottles.

57 Q. And did there come a time when you gave Exhibits 4 and 5 to me? A. There did.

MR. DOUGHERTY: I have no other questions of the officer.

THE COURT: Mr. Winston.

CROSS-EXAMINATION

By Mr. Winston:

Q. Officer Verrier, I heard you refer to the Exhibits 1, 2, 3, 4 and 5, and in each instance you said that they were found. Did you find them in those premises? A. Yes, sir.

Q. Yourself? A. Yes, sir.

Q. Where did you find Exhibit 1, for instance, the broken bottle? A. That was in the cellar of 458 K Street, sir. It was on a dresser. It was in, I would say, a pie tin sitting on top of this dresser in the cellar.

Q. Was there anybody -- or let me ask you, with reference to my client, Mr. Washington, was he around when you found that? A. No, sir.

Q. Now, with reference to Exhibit No. 2 --

MR. WINSTON: Your Honor, as I recall it, these are for identification.

58 They haven't been marked in evidence, have they?

THE COURT: They are for identification. They have not been admitted in evidence yet, but you have a right to cross-examine the witness concerning them.

By Mr. Winston:

Q. Now, with reference to this item, which is marked Government's Exhibit No. 2 for identification, did you find this too? A. Yes, sir.

Q. And where did you find this? A. That was under the mattress in the front room of premises 458 K Street, Northwest.

Q. And who was in the room at the time that you found that? A. Melvin Shippy and some other police officers.

Q. But the defendant George Washington, was he there at that time? A. No, sir.

Q. Now, with reference to Exhibit for identification No. 3, that is this, where was that found? A. That was in the trash can. The trash can is in the rear of premises 458 K Street, Northwest.

THE COURT: It was out in the open area?

THE WITNESS: Yes, sir.

59 By Mr. Winston:

Q. And you didn't see the defendant Washington around at that time, did you? A. No, sir.

Q. In fact, have you ever seen the defendant Washington before? A. No, sir.

Q. Now, with reference to Exhibit No. 4 for identification, I ask you again, you found these yourself? A. Yes, sir.

Q. Where were these found? A. In the trash can.

Q. That is outside the building? A. Yes, sir.

Q. And was the defendant Washington in the vicinity? Did you see him at that time? A. No, sir.

Q. And then these stamps marked Government's Exhibit No. 5 for identification, you found these? A. Yes, sir.

Q. And where were they found? Where did you find them? A. They were in a green suitcase, sir, in the bedroom, in the front room in premises 458 K Street, Northwest.

Q. Well, front room right or left? A. Front room. As far as I can remember, there is only one room which would be considered the front room.

60 Q. And when you found this was the defendant George M. Washington around? A. No, sir.

MR. WINSTON: That is all.

THE COURT: Mr. Goldberg.

By Mr. Goldberg:

Q. Officer Verrier, without reiterating the various items and where you found them, I would like you to indicate whether or not Ernest Walker was present at the time any of these items were found. A. He was not.

Q. Did you find anything that in any way connected him with ownership of the liquor bottle, the jewelry boxes or any of the other items which you found at the house on that day? A. No, sir.

MR. GOLDBERG: Thank you.

MR. DOUGHERTY: I have no redirect.

THE COURT: You may step down.

(Witness excused.)

THE COURT: You may call another witness.

MR. DOUGHERTY: May I approach the bench?

THE COURT: Yes.

(AT THE BENCH:)

MR. DOUGHERTY: I have another witness who has been here before who

61 was on call, and to my knowledge he hasn't arrived yet, your Honor. The scout car has been trying to get her.

THE COURT: That is all right.

MR. DOUGHERTY: Then the final witness would be Mr. Schrier, the partner of the firm, but I didn't want to call both people out at the same time.

THE COURT: Who is your next witness that they are trying to find?

MR. DOUGHERTY: She is another eye witness who can place both defendants

in the premises of 458 K Street and who rode from Southwest, where the liquor was stolen, to 458 K Street. She is the girlfriend of one of the other co-defendants.

THE COURT: I do not care who she is, but what would she testify to?

MR. DOUGHERTY: She will testify that she saw both defendants in 458 K Street and she saw the liquor in there also.

THE COURT: And the last witness will testify to what?

MR. DOUGHERTY: Merely that he closed the store and he counted the money ahead of time.

THE COURT: That is all you have?

MR. DOUGHERTY: That is all, Your honor.

THE COURT: No statements made by the defendants?

MR. DOUGHERTY: No statements.

62 THE COURT: You mean they made no statements or are you precluded by the Mallory case?

MR. DOUGHERTY: No, your Honor, they made no statements.

THE COURT: Did you try the case against the other defendants?

MR. DOUGHERTY: Yes, your Honor.

THE COURT: Did you have stronger evidence against the other defendants? You must have.

MR. DOUGHERTY: I had two eye witnesses to seeing them carry the whiskey in and out.

THE COURT: About the same as here?

MR. DOUGHERTY: The same as here, yes.

THE COURT: Do not take this.

(Discussion off the record.)

THE COURT: I think in view of your statement that the witnesses are not here -- and that is entirely reasonable -- we will recess until tomorrow morning at this time.

MR. GOLDBERG: Prior to recessing may I recall Mr. Shippy for one single question?

THE COURT: Yes.

MR. GOLDBERG: I failed to ask him the time.

THE COURT: That is all.right.

(IN OPEN COURT:)

THE COURT: You may recall Mr. Shippy.

63 MR. GOLDBERG: Mr. Shippy, please.

Thereupon,

MELVIN R. SHIPPY

resumed the witness stand, and having been previously duly sworn, was examined and testified further as follows:

FURTHER CROSS-EXAMINATION

By Mr. Goldberg:

Q. Mr. Shippy, I would like to ask you just one question, sir, and that is this: At what time did you return home from the nightclub on the morning of August 18? A. It was quarter till one.

Q. Quarter of one? A. Yes, sir.

THE COURT: So it was really on the 19th?

THE WITNESS: Yes, sir.

MR. GOLDBERG: No further questions.

MR. DOUGHERTY: I have no other questions.

THE COURT: You may step down.

* * * * * * * *

65 January 6, 1959

* * * * * * * *

67 THERESA WILLIAMS

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOUGHERTY:

THE COURT: You may proceed.

MR. DOUGHERTY: Thank you, Your Honor.

BY MR. DOUGHERTY:

Q. Would you please tell us your name? A. Theresa Williams.

68 Q. And where do you live, please? A. 923 Sixth Street, S. W.

Q. Now, may I direct your attention --

THE COURT: Just a moment. Let me have your address again. Speak distinctly and a little louder.

THE WITNESS: 923 Sixth Street, S. W.

BY MR. DOUGHERTY:

Q. Now may I direct your attention to the evening of August 18, 1958 --

A. Yes, sir.

Q. -- and ask where you were at about ten-thirty in the evening?

A. I was at my mother's at that time.

Q. Now, did there come a time --

THE COURT: You were where?

THE WITNESS: At my mother's.

THE COURT: Find out where it is.

THE WITNESS: 923 Sixth Street, S. W.

THE COURT: All right.

BY MR. DOUGHERTY:

Q. Now, did there come a time when you left your mother's residence?

A. Yes, sir.

Q. Where did you go? A. I went to 452 M Street, S. W., where I live.

69 Q. Now, did there come a time when you saw a person known as Junior Walker? A. Yes, sir.

Q. Where did you first see Junior Walker? A. He came to my mother's house.

Q. And did there come a time when you left with Junion Walker? A. Yes, sir.

Q. And where did you go? A. To 452 M Street, S. W.

Q. Now, did there come a time when you saw a person known as George M. Washington?

THE COURT: I think you are leading the witness.

MR. DOUGHERTY: All right.

BY MR. DOUGHERTY:

Q. May I ask what you saw Junior Walker do after you went to this address at 4 -- what did you say it was, 423? A. 452 M. Street.

Q. -- S. W. What did you see Junior Walker do after that? A. I went to sleep after that. Him and Paul and the rest of them that was there went out. I don't know where they went.

Q. Did there come a time when he came back, when Junior Walker

70 came back? A. He came to the door and called me and Margy, his girl.

Q. Marjorie who? A. Streets, I guess the name. I don't know her last name.

Q. What did you do then? A. He called --

THE COURT: Just a moment. Read the answer, please. Read the last answer.

(Whereupon the answer was read by the reporter.)

BY MR. DOUGHERTY:

Q. What did you do then? A. He told us come on, we going to take a ride.

Q. All right. What did you do then? A. Me and her, me and Margy went downstairs; the car was parked over across the street from the house and we got in the car.

Q. All right. Now, who else was in the car, if anyone? A. Leroy.

THE COURT: Who?

THE WITNESS: The one that is locked up with my friends now.

MR. DOUGHERTY: Leroy, she said, Your Honor.

71 BY MR. DOUGHERTY:

Q. Do you know Leroy's name? A. All I know is Leroy.

Q. All right. Now, was there anything in the car? A. Yes, sir.

Q. What was in the car? A. Was a lot of boxes.

Q. Did you see what was in the boxes? A. No, sir, I didn't.

Q. Did there come a time when you saw Mack? A. Mack?

Q. Mack. A man known as Mack.

THE COURT: Suppose you refer to people by name instead of by nicknames. Otherwise it is very confusing.

MR. DOUGHERTY: I understand, Your Honor. The reason I do this --

THE COURT: No, no, proceed.

MR. DOUGHERTY: Thank you, Your Honor.

BY MR. DOUGHERTY:

Q. Did there come a time when you saw George M. Washington? A. I saw all of them at my house.

Q. All right. Now, do you see anybody here in the Courtroom this morning that was in the car that evening? A. Junior.

72 Q. Which one is Junior? Who do you mean by Junion? A. (Indicating) The one next to the one with the brown suit, the man with the brown suit on.

THE COURT: Speak up.

THE WITNESS: Junior Walker.

MR. DOUGHERTY: May the record show that the witness has identified the Defendant Ernest Walker?

THE COURT: What is his real name?

THE WITNESS: All I know him most is by Junior. I just know him by Ernest lately.

THE COURT: Is that Ernest Walker? Is that the man who is known as Ernest Walker?

THE WITNESS: Yes, sir, right there (indicating).

BY MR. DOUGHERTY:

Q. Do you see anyone else in the Courtroom who was in or by the car that evening? A. That one right there, (indicating) he was at my house that night. He came up there in the cab, him and my old man, behind us, to this house where we went with these boxes.

THE COURT: Just a moment. The question is, did you see anybody else in the car. Was that your question?

MR. DOUGHERTY: Yes, Your Honor, in or by the car.

THE WITNESS: No, sir.

THE COURT: Walker was in the car?

73 THE WITNESS: Yes, sir.

BY MR. DOUGHERTY:

Q. Did there come a time when you drove somewhere? A. Yes, sir.

Q. Where did you go? A. Uptown on some street. I didn't know what street it was, to tell you the truth.

Q. Who drove the car? A. Junior.

THE COURT: You mean Walker?

THE WITNESS: Yes, sir.

BY MR. DOUGHERTY:

Q. Did there come a time when you got out of the car? A. Yes, sir.

Q. And do you know where you were? A. No, I don't know exactly where it were.

Q. All right. Did there come a time when the boxes were taken out of the car? A. Well, I was sick in my stomach. Me and Margy went in the house. When we came into the bathroom, who brought the boxes in, I don't know. When I came out the bathroom, the boxes was in the room.

Q. Now, do you see anybody in the Courtroom here this morning who was in that room? A. That man over there.

74 Q. Which man do you mean? A. (Indicating).

Q. Are you pointing to the white-haired colored man with the white shirt on? A. Yes, sir. I don't know him real good. I haven't seen him no more than three times in my life.

MR. DOUGHERTY: May the record show the witness has identified the Defendant Washington, please, Your Honor?

THE COURT: The record may show that the witness pointed to the Defendant Washington.

MR. DOUGHERTY: Thank you.

BY MR. DOUGHERTY:

Q. Now, when you saw the boxes in the house, did you see what was in them? A. No, sir; wasn't open.

MR. DOUGHERTY: Thank you, Your Honor. I have no other questions.

THE COURT: Any cross examination?

MR. WINSTON: Yes, may it please the Court.

THE COURT: Proceed.

CROSS EXAMINATION

BY MR. WINSTON:

Q. You testified a few moments ago that you were in the room there with Margy Streeter; is that her name? A. Yes, sir. That was at my house. At my house.

75 Q. Yes. What were you doing there at that time? A. I lay across the bed and went to sleep. When I woke up, all of them that had been come in had gone out. Wasn't nobody but me and Margy.

Q. Who was sleeping there? A. Wasn't -- I told you wasn't anyone in the room but me and Margy when I woke up. Wasn't nobody there but me and Margy. I went to sleep.

Q. And about what time was that? A. I don't know exactly what time it was. I know it was late.

Q. Had you been drinking that evening? A. Yes, sir.

Q. About how much had you drunk? A. I don't know exactly.

Q. What was it that you had drunk at that time? A. Some wine.

Q. Wine? A. Yes, sir.

Q. Any whiskey? A. No, sir, I don't drink whiskey.

Q. Well, had you drunk it out of a glass?

THE COURT: It makes no difference.

MR. WINSTON: I am trying, Your Honor --

THE COURT: She admits she had been drinking wine.

76 BY MR. WINSTON:

Q. Would you say that you were pretty sleepy at that time? A. When I went home?

Q. I beg your pardon? A. Yes, I was sleepy.

Q. Were you paying much attention to what was going on at that time? A. No, I wasn't. All I knew there was talking. When I woke up, they was gone.

Q. Now, you testified a few minutes ago that you saw (indicating) -- A. He was at my house, I told you that. He was there, too.

Q. About what time did you say that you saw him there? A. He was there when I went to sleep. That was late. When I got home, when me and Paul and Junior and Margy went around the house, we was there, and then they came upstairs later.

Q. Did he come up, too? A. Yes.

Q. Are you sure about that? A. Yes, sir.

Q. Now, you testified a few minutes ago that you didn't know him very well. A. I said I --

77 THE COURT: Just a moment.

THE WITNESS: --haven't seen him three times.

THE COURT: Stop when the Court is speaking. Everybody has to stop. Don't argue with the witness. Just ask questions.

BY MR. WINSTON:

Q. Did you know where they went? A. No, sir, I don't.

Q. You have no idea? A. No.

Q. And you just say that a few people came back later; is that right? A. I said Junior came back later and called me and Margy.

Q. And where did you go after that? A. We went -- got in the car and went uptown to this house. I don't know what house it was.

Q. What did you do at that house? A. We didn't do anything. I told you I was sick and went in the bathroom and came out. When I came out, the boxes was there.

Q. You say you were sick? A. Sick in my stomach.

Q. You didn't feel very well? A. No, sir.

78 Q. And at that time, you were not in a position or you didn't feel like looking around to see what was going on?

THE COURT: No, no, no. You are assuming facts. Don't argue with the witness and don't state facts. Just ask questions.

MR WINSTON: That is all.

THE COURT: Any cross examination, Mr. Goldberg?

BY MR. GOLDBERG:

Q. Miss Williams -- A. Yes, sir.

Q. Are you also known as Miss Munson? A. Mrs. Munson.

Q. Are you also known as Mrs. Munson? A. I went under his name. I have lived with him three years.

Q. You lived with Mr. Munson? A. Three years.

Q. Is this your address at 452 M Street? A. It were.

Q. It was your address? A. Yes, sir.

Q. You have since moved back to 923 6th Street, with your mother? A. Yes, sir.

79 Q. Now, Mrs. Williams, you testified that you had been drinking. When did you start drinking that day? A. Oh, around about -- I guess it was about eleven or twelve o'clock.

Q. In the morning? A. Yes, sir.

Q. You had been drinking generally the entire day? A. I had been drinking right smart.

Q. And would you say that you were intoxicated? A. Yes, sir, I could say that. That is why I went to sleep.

Q. And would you say also that because you were intoxicated you can't remember the house number to which you went? A. No, I don't know --

Q. Could you tell me --

THE COURT: Just a moment. Let her finish her answer.

MR. GOLDBERG: I am sorry.

THE COURT: Another thing, don't assume facts in your questions.

MR. GOLDBERG: I bet the Court's pardon. I am sorry.

BY MR. GOLDBERG:

Q. Go ahead, Miss Williams. A. I don't know. I couldn't show you the house right now I went to.

Q. Can you tell me, Miss Williams, what type of car you got into that
80 evening? A. It was a kind of light car, light gray. I don't know the make of it; I don't know nothing about --

Q. Do you know the time -- I am sorry, you don't know the name of the car? A. No. I don't know much about cars.

Q. Do you know who owned the car? A. No, I don't know who owned it. All I know, Junior was the one that drove me.

Q. Do you know, Miss Williams, how many people got into that car? A. Me, Margy, Junior and Leroy. That is all could get in there because was so many boxes in there.

Q. Did you see Ernest Walker at any time after you got into the car? A. Did I do what?

Q. When you got to 458 K Street, or the destination that you were heading for, did you see Ernest Walker at that address? A. Yes, I saw him.

Q. Did you see him enter the house? A. Yes. After the boxes was out of the car, he took me and Paul back home.

Q. He took you and Paul back home? A. Yes, sir.

81 Q. How long were you at 458 K Street? A. We wasn't there long.

Q. How long? A. I don't know the exact time. I know it wasn't long because I was sick and Paul told him to come on take me home.

MR. GOLDBERG: Will Your Honor indulge me for just a moment? May we approach the bench?

THE COURT: You may come to the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. GOLDBERG: I was just wondering whether or not the statement I am going to make should be off the record?

THE COURT: I permit nothing in a trial to be made off the record. I insist on having all bench conferences reported.

MR. GOLDBERG: I see, sir. The reason is, I want to ask this woman in regard to her previous record of convictions. However, we have not been able to obtain the statement of convictions.

THE COURT: Well, do you know that she has been convicted?

MR. GOLDBERG: I know she has served at least a sentence of sixty days.

THE COURT: For what?

82 MR. GOLDBERG: Assault.

THE COURT: If you know that, you may ask the question, even if you haven't got the record. I only said yesterday, if you don't know, you may not ask the question on speculation.

MR. GOLDBERG: The only reason I ask, sir, is if she denies it, I cannot rebut it without the record.

THE COURT: If she denies it, you will be bound by her denial; but I will permit you to ask the question.

MR. GOLDBERG: Thank you, sir.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

BY MR. GOLDBERG:

Q. Miss Williams, have you ever been convicted of any crime in the District of Columbia? A. Yes, sir.

Q. And would you state to the Court and to the Jury what crime that was? A. For assault.

Q. Assault? A. Yes, sir.

Q. And is that the only crime of which you have been convicted in the District of Columbia? A. No, sir.

Q. What other crimes have you been convicted of? A. Disorderly.

Q. And how many times have you been convicted of disorderly conduct?

83 THE COURT: No, no. I will exclude disorderly conduct, because that is not a crime involving moral turpitude. Assault is.

MR. GOLDBERG: I am sorry. I have no further questions.

MR. DOUGHERTY: If Your Honor please, just one question on redirect.

REDIRECT EXAMINATION

BY MR. DOUGHERTY:

Q. Could you tell His Honor and the ladies and gentlemen of the Jury where Siegle's Liquor Store is in relation to your address at 452 M Street? A. Yes, sir.

Q. Where is it, please? A. Right across --

THE COURT: Don't we have the address of the liquor store?

MR. DOUGHERTY: Yes, we do, Your Honor.

THE WITNESS: It is right across --

THE COURT: Just a moment. Don't we have the address of the liquor store?

MR. DOUGHERTY: Yes, Your Honor, but it is on 4th Street.

THE COURT: Yes. Why is it necessary to examine the witness about that?

84 MR. DOUGHERTY: I guess I will withdraw it.

THE COURT: You may step down.

(Witness excused.)

THE COURT: You can argue that to the Jury. The Court takes judicial notice of the map of the District of Columbia.

MR. DOUGHERTY: Mr. Schrier, Jack Schrier. Whereupon --

JACK SCHRIER

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOUGHERTY:

Q. Would you state your name, please? A. Jack Schrier.

THE COURT: How do you spell your last name?

THE WITNESS: S-c-h-r-i-e-r, 1129 4th Street, N. W.

THE COURT: Is it John Schrier or Jack?

THE WITNESS: Jack.

BY MR. DOUGHERTY:

Q. Where do you live, please? A. Where I live? 7608 --

THE COURT: Speak up so everybody can hear you, Mr. Schrier.

THE WITNESS: I am sorry. 7608 Wildwood Drive, Takoma Park.

85 THE COURT: If you can't talk louder, speak through the microphone. It is there for your convenience. You are in a big courtroom and everybody has to hear what you are saying.

BY MR. DOUGHERTY:

Q. And your occupation, sir? A. I am an owner of a liquor store on 4th and M Street, S. W.

THE COURT: Now get closer to the microphone if you can't talk so everybody can hear you.

THE WITNESS: All right. I am in the liquor business at 4th and M street, S. W.

BY MR. DOUGHERTY:

Q. What is the name of the liquor store? A. We trade as Siegle's Liquor Store.

Q. May I direct your attention to the 18th of August, 1958, and ask

you if you were so engaged in your store? A. Yes, sir.

Q. On that date. May I direct your attention to about nine o'clock in the evening. A. Yes, sir.

Q. Now, did there come a time when you closed the store? A. Yes, sir. At nine o'clock, we shut down the store. Then I make up my register; put my money away; I go home. Leave the store.

86 THE COURT: Just listen to the questions and answer them. Don't keep on telling us something else.

THE WITNESS: I am sorry, Your Honor.

BY MR. DOUGHERTY:

Q. After you closed the store, would you tell us in detail what you did? A. After I closed my store, I check my registers, receipts for the day; I take them out; and I put them away in the safe. Then I count my bank; I know exactly how much of a bank we have.

THE COURT: What do you mean by counting the bank?

THE WITNESS: Your Honor --

THE COURT: You mean counting the money?

THE WITNESS: Well, we count the receipts in order to check out for me the register, Your Honor. We have a bank --

THE COURT: No, no. You mean money; don't you?

THE WITNESS: Money, that is right. I am sorry.

THE COURT: Proceed.

MR. DOUGHERTY: All right.

BY MR. DOUGHERTY:

Q. Did you count this money? A. That is right.

Q. And exclusive of the money in the safe, how much money did you have in the register? A. $281.

87 Q. Now, do you know either of these two men that I am indicating sitting here in the courtroom, Junior Walker, Ernest Walker, or George M. Washington? A. No, I don't.

Q. On that evening, did you give either of these --

THE COURT: Will you come to the bench, please?

* * * * * * * * *

88 THE COURT: Did I understand you to say there was $281 in the cash register?

THE WITNESS: Yes, sir. In three of them, Your Honor.

THE COURT: You may proceed, Mr. Dougherty.

MR. DOUGHERTY: Thank you, Your Honor.

BY MR. DOUGHERTY:

Q. Did you return to the store the following morning, August 19?

THE COURT: Read the question.

(Whereupon the pending question was read by the reporter.)

THE COURT: Read the question to the witness and you answer it.

(Whereupon the pending question was reread by the reporter.)

THE WITNESS: Yes, I did.

BY MR. DOUGHERTY:

Q. Did you count the money? A. We couldn't count the money that particular moment when I got to the store, because the combination of the safe was locked. I mean, was broken off; and we had to wait for the safe man to come. Come sometime in the afternoon.

Q. I don't mean the money in the safe. I mean this money that you left in the register. A. All of it was gone.

Q. All of it was gone? A. That is right.

89 Q. Thank you. I have no other questions.

THE COURT: Any cross examination?

MR. WINSTON: May I defer to Mr. Goldberg for a few minutes? May he cross examine first?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. GOLDBERG:

Q. Mr. Schrier -- A. Yes, sir.

Q. -- did you make an inventory of the merchandise that was missing

from the store?

THE COURT: He didn't testify about the inventory, so that would not be proper cross examination. Cross examination has to be confined to the scope of direct.

MR. GOLDBERG: Yes, sir.

BY MR. GOLDBERG:

Q. Mr. Schrier, May I ask you how long have you been in business at this particular location on 4th Street? A. About two and a half years.

Q. During that two years, have you had any other occasion to have your store broken into? A. No, sir; that was the first time, sir.

Q. Since that time -- A. Yes.

90 Q. -- has your store been broken into?

THE COURT: I think that is irrelevant.

BY MR. GOLDBERG:

Q. In your business, Mr. Schrier, do you have a number -- A. Yes, sir.

Q. -- given to you --

* * * * * * * * *

91 MR. DOUGHERTY: Your Honor, the United States rests.

THE COURT: The Defendant Washington may proceed.

MR. GOLDBERG: May we approach the bench?

THE COURT: Yes, indeed.

(Whereupon counsel approached the bench and the following proceedings were held;)

MR. GOLDBERG: At this time, counsel for Ernest Walker moves for a dismissal of the indictment for failure to make out a prima facie case in this action.

MR. WINSTON: I agree with him.

THE COURT: The motion is denied.

* * * * * * * * *

93 Whereupon --

MARJORIE JANICE STREETER

was called as a witness by the Defendant Walker and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q. Would you state your full name? A. My name is Marjorie Janice Streeter.

Q. Where do you live, Miss Streeter? A. 1285 7th Place, N. E., Apartment 20.

THE COURT: 1285 7th Place, N. E. ?

THE WITNESS: Yes, Apartment 20.

BY MR. GOLDBERG:

Q. Do you know the Defendant in this action, Ernest Walker? A. I do.

Q. And how long have you known him? A. I have known him for the past two and a half years.

Q. And how often have you been in his company? A. For the past two and a half years.

Q. Now, directing your attention to the 18th of August, 1958 --

A. Yes.

Q. -- were you in the company of Ernest Walker on that day? A. Yes, I was.

94 Q. Where did you meet him? A. I was with Ernest Walker the whole day. As a matter of fact, we were at 458 K Street, N. W. We were there to visit Clinton Jacobs.

Q. What time did you get to 458 K Street, N. W. ? A. I don't know exactly. I think it was sometime that morning.

Q. And did Ernest Walker accompany you to 458 K Street? A. Yes, he did.

Q. You didn't meet him there? A. No.

Q. Do you know how long you were at 458 K Street? A. We were

there all day up until around five o'clock that afternoon.

Q. Do you know where Ernest Walker lives? A. He was staying at my mother's house, who was living at 310 10th Street, S. E., at that time.

Q. How long had he been staying at your mother's house? A. He had been staying there for the past maybe three or four months.

Q. Where did he live or where did he sleep in your mother's house? A. Well, he had to sleep in the kitchen because at the present time, my mother only had one bedroom, living room, kitchen and bath.

95 Q. On the 18th of August, you proceeded to 458 K Street, with Ernest Walker? A. Yes, I did.

Q. What did you do after you got there?

THE COURT: Well now, I think this is immaterial. She has said she was with him all day up until five o'clock in the afternoon. Well now, this housebreaking is supposed to have taken place sometime after 9:00 p. m., after the store closed. So anything that happened during the day would be immaterial; would it not?

MR. GOLDBERG: I intend to show a continuity for the entire length of time.

THE COURT: I think that is irrelevant as to what they were doing during the day.

BY MR. GOLDBERG:

Q. Did there come a time when you and Ernest Walker left 458 K Street? A. Yes.

Q. And went to the Southwest area? A. Yes, we did.

THE COURT: Don't lead your witness.

BY MR. GOLDBERG:

Q. Where did you go? A. We went to 6th and M Street, S. W. I don't know the address. We went there to visit Paul and Theresa Munson.

96 Q. What did you do there? A. Well, when we first arrived there, Paul and Theresa weren't home.

THE COURT: To visit whom?

THE WITNESS: Paul and Theresa Munson.

THE COURT: Munson?

THE WITNESS: Yes.

THE COURT: I see.

THE WITNESS: They weren't home when we first got there. So we walked around to Theresa Munson's mother, around on, I think, 6th and H; and we met Theresa and Paul coming out of her mother's; and we walked back around to Paul's house. We went in; we set down; we had a few drinks; and we was just sitting around talking.

BY MR. GOLDBERG:

Q. Can you tell me what time this was? A. Well, it was all between five and six-thirty, I know.

Q. Five and six-thirty that evening? A. Uh-huh.

Q. Did there come a time when other individuals -- or did anyone else visit at 458 -- A. Yes. While we were there, George Washington, his brother, Leroy Washington came down.

97 Q. And what was done then? A. Well, they just sit around talking; and then they went in the kitchen and they talked a while. As far as I know, just visiting.

THE COURT: I am going to call your attention again to the fact that the break-in did not occur until after nine p. m. on August 18. Therefore, what they were doing prior to that time you need not go into in detail.

MR. GOLDBERG: Thank you.

BY MR. GOLDBERG:

Q. Miss Streeter, how late did you remain at the M Street address? A. I think it was around, maybe, eleven or eleven-thirty, or something to twelve.

Q. Now, during that time, did Ernest Walker ever leave? A. Not to my knowledge, no.

Q. Now, when you say not to your knowledge, were you there all the time? A. Yes, I was; but I did doze off to sleep one time.

Q. Do you know what time that well? A. Well, I think it was around maybe ten or something after ten.

Q. Now, when you went to sleep, was Ernest Walker present at the apartment? A. Yes, he was.

98 Q. How was he dressed? A. He had on everything but his coat and his hat.

Q. And when you woke up, was Ernest Walker still at the apartment? A. Yes, he was still there.

Q. How was he dressed? A. He was dressed the same way he was when I went to sleep.

THE COURT: Now, suppose you come down to when the party broke up. She said they were there until eleven or eleven-thirty p. m.

MR. GOLDBERG: I am getting to that, Your Honor.

THE COURT: Let' move along a little faster.

BY MR. GOLDBERG:

Q. Did there come a time when you and Ernest and any of the other persons left that apartment? A. Ernest didn't leave it. I didn't leave. But as far as I know, Paul and Leroy and George left and Clint Jacobs. I am not sure where they went or what they did, but they did leave the apartment.

Q. When did you all leave the apartment? When did you finally leave the apartment? A. We all left the apartment, I think it was about -- I guess maybe twelve-thirty or one o'clock, something like that.

99 Q. And where did you go? A. We went to 458 K Street, N. W.

Q. And how did you get there? A. We went in Leroy Washington's car.

Q. Do you remember who drove the car? A. Leroy.

Q. The owner? A. Yes, the owner.

Q. Can you describe the car? A. It is a gray car. I am not very good at describing cars.

Q. Do you know the make? A. Well, it is an old car.

Q. Now, when you got in the car, you sat in what part of the car?
A. I sat in the back.

Q. You sat in the back of the car? A. Uh huh.

Q. Was there anything in the car? A. There was some boxes in the car.

Q. Do you know what was in the boxes? A. Well, I couldn't say exactly what was in the boxes. I did open one of the boxes and I know there was some bottles in the box; but it was dark in the car and I couldn't see what it was and I didn't bother to take it out and look at it.

100 Q. Did you have any conversation with anyone about the boxes or what you saw in the boxes? A. Well, I asked Ernest Walker what was the boxes and what was in them; and he told me it was none of my business and none of his.

THE COURT: Just a moment. You know that is not admissible.

MR. GOLDBERG: I am sorry.

BY MR. GOLDBERG:

Q. Now, when you got to 458 K Street, did you leave the car? A. Yes, I got out of the car. I had to get out of the car because they wanted to take the boxes out of the car.

Q. And did Ernest Walker get out of the car? A. Yes, he got out of the car, too.

Q. How long were you out of the car? A. I don't know. About a half hour perhaps.

Q. Did Ernest Walker do anything with these boxes? A. No, he did not, because at the time, I was talking to him, still trying --

THE COURT: Just answer the questions.

THE WITNESS: No.

BY MR. GOLDBERG:

Q. Then what did you do? A. We waited out there for Leroy to come out to take us home. He didn't come right out; so we walked over into 458; we got as far as the hall; and they sound like they was arguing, so we

didn't go inside the room, because Ernest said he didn't want to get mixed up in it.

Q. When you say, "we," who do you mean? A. Ernest Walker and myself.

Q. And what did you do then? What did you do after you walked out? A. Well, by the time we got in the hall, while we was trying to decide whether or not to go in, Leroy came out.

THE COURT: Now, just a moment. Suppose you listen to the question carefully and just answer the question.

Suppose you repeat your question.

BY MR. GOLDBERG:

Q. What did you do immediately after you came to the conclusion they were arguing and you walked back out? A. We stood out in the hall.

Q. Then what did you do? A. After a while, Leroy came out; we went back out and got in the car and went over to my mother's.

Q. And did you leave your mother's house thereafter? A. No; we stayed there.

MR. GOLDBERG: I have no further questions.

THE COURT: Mr. Dougherty.

CROSS EXAMINATION

BY MR. DOUGHERTY:

Q. Now, do you remember making a statement here in this Courthouse? A. Yes, I do.

Q. Before the Grand Jury? A. Yes, I do.

MR. GOLDBERG: Your Honor, may we approach the bench?

THE COURT: Yes.

(Whereupon counsel approached the bench and the following proceedings were had:)

MR. GOLDBERG: Your Honor ruled yesterday that Grand Jury testimony was inadmissible.

THE COURT: Oh, no, no. Of course, I ruled that. In other words,

the defense may not ask concerning Grand Jury testimony. The Government may. However, Mr. Dougherty, if you ask any question about what she testified before the Grand Jury, I will, on request, make the transcript of her Grand Jury testimony available to defense counsel.

MR. DOUGHERTY: No objection to that whatsoever, Your Honor.

MR. GOLDBERG: May that be seen by the defense attorneys prior to any statements?

THE COURT: Oh, certainly not.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

103 THE COURT: Proceed, Mr. Dougherty.

BY MR. DOUGHERTY:

Q. Do you remember that you made this statement on Thursday, the 4th of September, 1958? A. I remember making a statement.

Q. And do you remember that you said --

THE COURT: No. You have a right to ask her: Did you say so-and-so?

BY MR. DOUGHERTY:

Q. Didn't you say: "So after that we went up there, me, Ernest Walker, Leroy, Theresa, in the car, and that Paul and T and Mack was in the car with us, too." A. I did not say they were in the car with us, too. They couldn't have possibly got in the car with us, too.

Q. And further, didn't you say: "And Paul and T left to catch a cab, and come up there; and after they got up there, they took all the boxes out of the car. It was full of whiskey and jewelry; and they had some change; they divided it all up; and after that, everybody went home, those who were going." A. Could I tell why I made that statement?

MR. GOLDBERG: Your Honor, may we make the request at this time to see the transcript of the record which he has been quoting?

104 THE COURT: Yes, as soon as the cross examination is finished.

MR. GOLDBERG: I am sorry, I didn't mean to say, "he,"

Mr. Dougherty.

MR. DOUGHERTY: That is all I have, Your Honor.

THE COURT: Very well. You say you want to see the transcript?

MR. GOLDBERG: I would like to see the transcript.

THE COURT: I think you have a right to do that. I am sure the Government doesn't object to that.

Suppose we take our mid-morning recess at this time so as to give you an opportunity to see the transcript.

MR. DOUGHERTY: If it please Your Honor, when I said that is all I have, I meant as far as this was concerned.

THE COURT: Oh, well, finish your cross examination first before we take the recess.

BY MR. DOUGHERTY:

Q. Now, may I direct your attention to August 21, at about 8:30 p. m., 1958, and ask you if you were in Number Four Precinct Station of the Metropolitan Police Department? A. Yes, I was.

Q. And didn't you say: "Somebody told T to get Paul and to catch a
105 cab, and come up to Northwest. Paul and T came on up to K Street, N. W., and about a half hour we were all worried because it took them so long. They split up the whiskey among them. Each one took a big box. Paul got one little box and T got the other one. I didn't see any green money but I did see some change. They were all fussing about how much money they each got.

Did you say that? A. Yes, I did say that.

MR. DOUGHERTY: That finishes my cross.

THE WITNESS: Your Honor, could I tell why I made that statement?

THE COURT: No, no.

MR. GOLDBERG: Your Honor, may I enlarge upon my request and ask that we also be permitted to see the second paper?

THE COURT: Was that a signed statement or notes made by an officer?

MR. DOUGHERTY: It is a signed statement. I have no objection.

THE COURT: Then they are entitled to see it. Does that conclude your cross examination of this witness?

MR. DOUGHERTY: Yes, it does.

THE COURT: We will take our mid-morning recess at this time and during the recess defense counsel can see those two statements.

106 (Whereupon a short recess was taken.)

THE COURT: You may proceed. Any redirect examination, Mr. Goldberg?

MR. GOLDGERG: Yes, Your Honor. Are you through, Mr. Dougherty?

MR. DOUGHERTY: Yes.

REDIRECT EXAMINATION

BY MR. GOLDBERG:

Q. Mrs. Streeter, could you tell us the circumstances under which the statement that has been read to you was made? A. Well, I was taken to Number Four --

THE COURT: Which statement?

MR. GOLDBERG: Let's take one statement at a time.

BY MR. GOLDBERG:

Q. I am referring now at the moment to the statement that was identified as the one you made at Number Four Precinct. A. That was the one that I made at Number Four Precinct.

THE COURT: Let that be marked.

THE WITNESS: I was called by Detective Wesley, Detective Evans, several other detectives of whom I don't know the names, and told unless I made that statement, I would be charged with housebreaking and put in jail. Unless I signed it, the statement was no good. If I didn't sign it, I was going to jail. Said it was better for me to be a witness than to be a defendant.

107 (Whereupon the said document was marked Defendant Walker's Exhibit No. 1, for identification.)

BY MR. GOLDBERG:

Q. Now, in regard to the second statement the extracts of the one that has been read to you, that has been indicated as the statement before the Grand

Jury, can you tell us the circumstances under which you made this statement? A. Yes, I can. I went to the assignment room downstairs; I was told to come here by Detective Wesley the evening before, that he came over my house and told me to come there before I went to the Grand Jury.

My mother went there with me. We both went there. Detective Wesley told me again that unless I repeated the same thing I had told him, I would be charged with perjury as well as housebreaking and go to jail.

MR. GOLDBERG: Would the Clerk mark this defendant's Exhibit No. 2, for identification.

THE CLERK: That is Defendant Walker's No. 2.

(Whereupon the said document was marked Defendant Walker's Exhibit No. 2., for identification.)

108 BY MR. GOLDBERG:

Q. Now, Miss Streeter, I am going to show you a paperwriting. A. Yes, I wrote that.

Q. Did you write that? A. Yes, I did.

Q. Is this your signature? A. That is my signature.

Q. Now, can you tell me whether or not this is an original of a letter written by you? A. Well, it is a copy of the original letter I wrote to the District Crime Committee, the U. S. Senate Building.

Q. Now, this letter is dated December 11, 1958. A. Yes, it is.

MR. GOLDBERG: Would Your Honor permit this letter to be read?

THE COURT: Certainly not, not unless it is introduced into evidence and admitted. I don't know whether it is admissible or not.

MR. GOLDBERG: I would like to move at this time that this letter be admitted in evidence.

THE COURT: You are offering it in evidence?

MR. GOLDBERG: I am offering it in evidence.

THE COURT: It is a letter from whom to whom?

MR. GOLDBERG: From Mrs. Streeter. It is addressed: "To Whom It May Concern," but from her testimony, originally addressed --

109 THE COURT: Just a moment. Don't tell us the contents of the letter. Have you seen it?

MR. DOUGHERTY: No, Your Honor, I have not seen it.

THE COURT: You have a right to look at it, of course.

MR. DOUGHERTY: Would Your Honor indulge me? Your Honor, I must object.

THE COURT: You may come to the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: You object?

MR. DOUGHERTY: I object, Your Honor.

THE COURT: Objection sustained. On what theory do you claim a written statement made by the witness is admissible?

MR. GOLDBERG: Simply to corroborate her present testimony.

THE COURT: Oh, no; that is not a proper way of corroborating. Are you going to have Detective Wesley in rebuttal?

MR. DOUGHERTY: I hadn't planned to, but I didn't know this was coming up. I think I will call him.

THE COURT: I am going to give you an opportunity, even if it is necessary to continue the case until tomorrow. I can't make the decision for you;

110 but I will give you the opportunity to produce him.

MR. DOUGHERTY: I understand.

THE COURT: Objection sustained.

MR. GOLDBERG: Your Honor, there is another factor, not in connection with this. We put a come-up from Lorton on two individuals who were in the past trial --

THE COURT: You did what?

MR. GOLDBERG: We asked the Clerk's Office to bring up two individuals who are presently at Lorton to be used as witnesses in this case. They brought up one and left the other there. The one that they left there is my witness and a very important witness.

THE COURT: In what form was your request made?

MR. GOLDBERG: My request was made through the United States Attorney.

THE COURT:What about that?

MR. DOUGHERTY: That is true. I did this as a courtesy to accommodate Mr. Goldberg.

THE COURT: I am going to give you any opportunity to have them at least here, of course. It may be necessary to recess the trial until tomorrow.

MR. DOUGHERTY: I hope not, Your Honor. We are doing everything we can. The request was made at eleven o'clock yesterday morning and the messenger did not pick it up. It was in the messenger's room all night.

111 THE COURT: But Mr. Goldberg says there were two witnesses and one of them was brought up from Lorton.

MR. DOUGHERTY: I don't know how it happened. One of those things. Both names were on the same slip.

THE COURT: Well, what is being done about getting him up here?

MR. DOUGHERTY: They are trying to bring him up forthwith.

THE COURT: I see. If not, I am going to give you an opportunity to have him brought up.

MR. GOLDBERG: I find myself in a peculiar predicament. He was my next witness after Miss Streeter.

THE COURT: You will have to change your order of proof.

MR. GOLDBERG: Then there is a lady in the courtroom who I would like to call as a witness; and I would like a rule on her at the moment.

THE COURT: We made the announcement at the beginning of the trial excluding all witnesses.

MR. GOLDBERG: This has just come up, Your Honor. I can use her to corroborate certain testimony.

THE COURT: Why didn't you have her excluded?

MR. GOLDBERG: I didn't know I was going to use her at the time. I find myself in a position now --

THE COURT: What is she going to corroborate?

MR. GOLDBERG: She is going to corroborate the tenancy of Mr. Walker at her home for a period of two to three months.

112 THE COURT: How is that relevant?

MR. GOLDBERG: The prosecution has indicated that he lived with this Clinton Jacobs boy for a period of two months, and he was seen daily by the prosecution witness.

THE COURT: You mean the Government?

MR. GOLDBERG: The Government.

THE COURT: What difference does it make where he was living? How does that affect the issues?

MR. GOLDBERG: Well, it affects the credibility of the Government's witness, Mr. --

THE COURT: Oh, no. You cannot impeach credibility in that manner, unless it goes to the issue; and I don't see that it goes to any issue here. That is a collateral matter.

MR. GOLDBERG: No; it does not go to any issue.

THE COURT: Then I do not think that is relevant.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

THE COURT: Anything further with this witness?

MR. GOLDBERG: Yes, Your Honor.

BY MR. GOLDBERG:

Q. Miss Streeter, in the statements that have been marked as Defendant's Exhibit 1 and the extract from the Grand Jury record, did you at any time implicate Ernest Walker?

113 THE COURT: Oh, no, no.

THE WITNESS: No, I didn't.

THE COURT: Implicate, in the first place, is a conclusion; and in the second place, that is not a proper question to ask.

MR. GOLDBERG: I have no further questions.

MR. DOUGHERTY: If it please Your Honor, I have some recross.

RECROSS EXAMINATION

BY MR. DOUGHERTY:

Q. Now, again directing your attention to the time you made this statement before the Grand Jury, do you remember who it was that questioned you? A. No, I don't.

Q. Do you remember that it was I who questioned you? A. I told you before I didn't remember.

Q. And do you remember that I asked you a question: "Now, Miss Streeter, on August 21, 1958, did you go to the detectives' office at Number Four Precinct in the District of Columbia?" A. You might have asked me that. If I answered it, you evidently did.

Q. Do you remember that your answer was: "Yes, sir, I did." A. Perhaps I did answer that; I don't remember that.

114 Q. Then do you remember that I asked you: "And did you make a statement there to Detective Parlotti and Detective Evans?" A. Yes, I remember that.

Q. And do you remember that I asked you: "And you made this statement of your own free will?" A. I remember you asked me that, yes.

Q. And do you remember that your answer was: "Yes." A. I have told you why I answered, yes.

Q. And then you remember that I later asked you: "And you realize you are here before the Grand Jury and that you don't have to testify if you don't wish to?" A. Yes.

Q. And: "You have a constitutional --" A. But I didn't believe that. I didn't know whether to believe it or not. I was scared.

Q. And do you remember that I said to you: "You have a constitutional right not to testify." A. You told me that, but I had been told something else, and I didn't know which to believe.

115 Q. Do you remember your answer was: "Yes, I understand." A. Yes.

Q. And then I asked you: And then do you remember that I asked you: "And you wish to testify; is that correct?" A. I remember you asked me

all of that.

Q. And you remember your answer was: "Yes." A. I remember my answer.

Q. How many people were in the Grand Jury room; do you remember? A. I couldn't tell you. I didn't count them. It was quite a few.

MR. DOUGHERTY: No other questions.

THE COURT: You may step down.

(Witness excused.)

MR. GOLDBERG: Your Honor, may I approach the bench?

THE COURT: Yes, indeed.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. GOLDBERG: I have just been advised that my next witness will be here at one o'clock.

THE COURT: You mean that is the witness from Lorton?

MR. GOLDBERG: The Lorton witness.

THE COURT: Is that your last witness?

116 MR. GOLDBERG: That is my last witness beside my Defendant.

THE COURT: Put him on now.

MR. GOLDBERG: Yes, sir.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

MR. GOLDBERG: Mr. Ernest Walker.

Whereupon --

ERNEST WALKER

was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q. Will you state your full name? A. Ernest Harvey Walker, Jr.

Q. What is your home address? A. 310 10th Street, S. E.

Q. How long have you lived in the District of Columbia, Mr. Walker? A. Ten years.

Q. Now, Mr. Walker, directing your attention to the 18th of August, 1958, approximately six o'clock, where were you at that time? A. 452 M Street, S. W.

117 Q. And what were you doing there, sir? A. I went to visit some friends.

Q. Give us the names of the friends. A. Paul and Theresa Munson.

Q. What time did you arrive there, sir? A. I would say about a quarter to six.

Q. How long did you remain at 452 M Street? A. About four hours, I reckon.

Q. Did you say, four hours? A. Four hours, yes.

Q. That would make it approximately ten o'clock or thereabouts? A. Something like that.

Q. Did you ever leave the premises of 452 M Street? A. No, I didn't.

Q. Were you in the company at 452 M Street with anyone else? A. Yes, I was.

Q. Who were with you? A. Marjorie Streeter, Paul Munson, Clinton Jacobs, Leroy Washington, and George Washington.

Q. Now, Mr. Walker, you left there sometime that evening; didn't you? A. No, I didn't.

Q. Well, I mean, did there come a time when you left there later in the

118 evening? A. Oh, yes.

Q. What time? A. I would say about ten, ten-thirty, I reckon.

Q. Where did you go, sir? A. 458 K Street, N. W.

Q. How long did you remain at 458 K? A. About a half hour.

Q. And then where did you go? A. 310 10th Street, S. E.

Q. Now, are you aware of the fact that there is alleged to have been committed a robbery, a housebreaking and robbery at a liquor store on 4th Street on that night? A. I didn't understand you.

Q. Do you know that there is alleged to have been committed a housebreaking

and robbery in a liquor store --

THE COURT: Not robbery, housebreaking and larceny.

BY MR. GOLDBERG:

Q. -- housebreaking and larceny in a liquor store? A. Yes, sir.

Q. On 4th Street. Now, Mr. Walker, did you have any connection with this at all? A. No, I didn't.

THE COURT: I don't know what you mean by whether he had any connection. That is very indefinite.

119 BY MR. GOLDBERG:

Q. Did you conspire to commit this robbery with anyone else? A. No, I didn't.

Q. Did you take an active part in the commission of this robbery?

THE COURT: When you say, active part -- did he take an inactive part?

BY MR. GOLDBERG:

Q. Did you do anything? A. No, I didn't.

Q. In connection with this robbery? A. No.

Q. Active or inactive? A. No.

MR. GOLDBERG: No further questions.

CROSS EXAMINATION

BY MR. DOUGHERTY:

Q. Are you the same Ernest Harvey Walker, Jr. who in 1949, or 1950 -- I beg your pardon -- was convicted of petty larceny? A. Yes, sir.

Q. And are you the same Ernest Harvey Walker, Jr. who in 1950 was

120 convicted of carrying a dangerous weapon? A. That is right.

Q. And are you the same Ernest Harvey Walker, Jr. who in 1950 was convicted of forgery? A. That is right.

Q. And are you the same Ernest Harvey Walker, Jr. who in 1950 was convicted of housebreaking? A. That is right.

Q. And the same Ernest Harvey Walker who was convicted of larceny from the United States Government in 1954? A. That is right.

MR. DOUGHERTY: No further questions.

MR. GOLDBERG: Mr. Walker, are you guilty of this charge?

THE COURT: No, you have already asked him.

THE WITNESS: No.

THE COURT: No, no; I will exclude that question. You have already asked him whether he participated in this robbery, in this housebreaking and larceny; and he answered your question. You cannot go on repeating it. The Jury has to decide whether he is guilty; not he.

MR. GOLDBERG: Yes, Your Honor.

THE COURT: You may step down.

MR. GOLDBERG: Your Honor, my last witness is Mr. Clinton Jacobs.

THE COURT: Well, you may call him.

121 MR. GOLDBERG: But he is on his way here.

THE COURT: You mean he is the person who is being brought from Lorton?

MR. GOLDBERG: Yes, Your Honor.

THE COURT: Well then, in the interest of saving time, I will let Defendant Washington proceed in the meantime.

MR. WINSTON: May I ask Your Honor to have a conference at the bench, please?

THE COURT: Yes.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. WINSTON: My client tells me that he doesn't want to go on the stand.

THE COURT: He doesn't have to.

MR. WINSTON: I understand; and I would like to know whether I should announce it before the Jury?

THE COURT: Oh, no. Just say nothing about it.

MR. WINSTON: Just say that the Defendant --

THE COURT: If you have no witnesses, just say Defendant Washington rests.

MR. WINSTON: I wanted to make sure.

THE COURT: Say that in open Court.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

MR. WINSTON: May it please the Court, Defendant George M. Washington rests.

122 THE COURT: I think if you are going to have any rebuttal, I would let you put on your rebuttal at this time. I don't think you will be prejudiced by putting on your rebuttal before the Defendant Walker concludes.

You only have the one witness who is to be brought from Lorton?

MR. GOLDBERG: Yes, Your Honor.

MR. DOUGHERTY: Would Your Honor indulge me for one moment, so I may confer with the officer?

THE COURT: Surely.

MR. DOUGHERTY: Your Honor, I hadn't contemplated calling Officer Wesley in this case; but I understand he is working today and I can get him here in a very short time.

THE COURT: How long will it take to get him here?

MR. DOUGHERTY: The officer thinks about fifteen or twenty minutes.

THE COURT: You could have sent for him. Counsel come to the bench please.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: You could have sent for him during the mid-morning recess, and he would have been here.

MR. DOUGHERTY: Yes, I could, Your Honor.

THE COURT: Have you sent for him already?

123 MR. DOUGHERTY: No.

THE COURT: Where is he working?

MR. DOUGHERTY: At Number Four precinct, Your Honor.

THE COURT: Oh. Is he out on the street?

MR. DOUGHERTY: I don't know. I haven't called yet, Your Honor.

THE COURT: What are you going to do, send for him by radio?

MR. DOUGHERTY: Yes, Your Honor.

THE COURT: We will take a recess.

MR. DOUGHERTY: I apologize. I was on the phone talking to the Marshal most of the mid-morning recess. I am sorry.

THE COURT: That is all right. As a matter of fact, he should have been here as one of the witnesses. He should have been available. However, I can conceive of a situation where you didn't contemplate using him. Get started on him right away.

MR. DOUGHERTY: I shall do so.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

MR. DOUGHERTY: The officer has gone.

THE COURT: Is your associate getting him?

MR. DOUGHERTY: He is doing that now, Your Honor.

THE COURT: Detective Wesley, is that the missing witness?

124 MR. DOUGHERTY: Yes, Detective Wesley.

THE COURT: You think he will be here in about fifteen or twenty minutes?

MR. DOUGHERTY: That is what I am informed.

THE COURT: We will take a recess until twelve o'clock.

MR. DOUGHERTY: Thank you, Your Honor.

(Whereupon a short recess was taken.)

MR. GOLDBERG: Your Honor, may I put Mr. Walker back on the stand for just a couple of questions, sir?

THE COURT: Yes, you may.

Whereupon --

ERNEST WALKER

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q. Mr. Walker, directing your attention back to 452 M Street, at the time you left 452 M Street, how did you leave there? What mode of transportation did you use? A. In Leroy Washington's car.

Q. Now, how did you happen to be in Leroy Washington's car? A. I asked him to carry me home.

Q. And your address? A. 310 10th Street, S. E.

Q. Now, Mr. Walker, do you drive a car? A. No.

125 Q. Have you ever driven a car? A. No.

Q. Do you have a permit to drive a car? A. No.

Q. Did you ever apply?

THE COURT: Now, you asked leave to recall him for one question. Now you are asking him about a whole series of matters.

MR. GOLDBERG: I am sorry, Your Honor. I have no further questions.

THE COURT: I am going to let you do it, because I don't want to do an injustice to anyone; but I wish you would not ask leave to recall a witness for one question and then ask a whole series of questions.

MR. GOLDBERG: I am sorry, Your Honor.

THE COURT: I think you ought to ask leave to do what you intend to do.

MR. GOLDBERG: I am sorry, Your Honor. I thought I said a few questions. I am sorry, sir.

THE COURT: I thought you said one question. Very well, you may proceed.

BY MR. GOLDBERG:

Q. Have you ever had a permit, Mr. Walker? A. I have applied for a

126 learner's permit.

Q. Did you ever take a driver's test? A. No.

Q. What happened to your learner's permit? A. Expired.

Q. How long ago was that, Mr. Walker? A. About four years ago.

MR. GOLDBERG: No further questions.

MR. WINSTON: May I ask the witness one question, please?

THE COURT: Yes, indeed.

MR. WINSTON: You mentioned a name, Leroy Washington. Who is

Leroy Washington?

THE WITNESS: Francis Leroy Washington.

MR. WINSTON: Is that Leroy Washington (indicating)?

THE WITNESS: No.

MR. WINSTON: It is a different person than the defendant here?

THE WITNESS: That is right.

MR. WINSTON: That is all.

THE COURT: Any recross?

MR. DOUGHERTY: No, thank you, Your Honor.

THE COURT: Very well; you may step down.

(Witness excused.)

MR. DOUGHERTY: May I call Detective Wesley, please, Your Honor?

127 Whereupon --

HENRY H. WESLEY

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

THE COURT: You may proceed.

MR. DOUGHERTY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DOUGHERTY:

Q. Would you tell us your name, please? A. Henry H. Wesley, assigned to the Fourth Precinct, Washington.

Q. And this is in the Metropolitan Police Department? A. Yes, sir.

Q. How long have you been a member of the Metropolitan Police Department? A. A little over eight years.

Q. Now, may I direct your attention to the 21st of August, 1958, and ask you if there came a time on that day when you saw and talked with a person known as Marjorie Streeter? A. Yes, sir, there did come a time.

Q. Do you see Marjorie Streeter in the courtroom? A. Yes, sir.

Q. Now, would you tell His Honor and the ladies and gentlemen of the Jury the circumstances under which you talked to Marjorie Streeter? A.

I entered the Fourth Precinct station house at about five-thirty, or a little
128 later, p. m. --

THE COURT: P. M. ?

THE WITNESS: Yes, sir.

The girl who was later identified as Marjorie Streeter was sitting behind the rail, what we call the rail, the clerk's office at Number Four. I talked to some detectives; one of the detectives called my name. At this time, Marjorie Streeter, who was sitting behind the rail, whom I didn't know at that time, caught my eye and said: Are you Detective Wesley? And I said: Yes. And she said: Could I talk to you? I said: Yes. We went into the sergeant's room, she and I.

She says: I don't know you, but I have heard of you, and I have heard that you are fair and square. My friends know you. She says: How bad a trouble am I in? I said: Well, I don't know. I haven't gone into it too far. I said: You should know that. She said: Well, I can't go to jail; I ain't going to jail for nobody. She says: I am going to tell the truth because I got kids and can't go to jail.

129 I says: Well, I would advise you to tell the truth. And I also advised her -- I said: Now, before you say anything, I want to tell you any statements you make can be used against you or can be used for you. You are not required to make this statement. You are making it of your own free will and you asked to make it.

She says: That is right, I am going to tell the truth because I ain't going to jail for nobody. She told me at that time as to what happened on the night the store was broken into in Southwest. Do you want me to call the name, sir, that she told me, that broke into the store?

MR. WINSTON: We object to that, Your Honor. His question wasn't answered.

THE COURT: I beg your pardon? Very well, you may proceed.

BY MR. DOUGHERTY:

Q. Would you tell His Honor and the ladies and gentlemen of the Jury

what she proceeded to tell you? A. She stated that on the Tuesday night before, I believe it was, she -- her boy friend, whom she called Junior Walker, and a boy whom she called -- who is not here, whom she called T --

MR. GOLDBERG: I am going to offer an objection to this testimony.

130 THE COURT: On what ground?

MR. GOLDBERG: On the ground that the statements are in evidence. The statements have been introduced, have been referred to; and I think this is a form of hearsay, Your Honor, and is inadmissible.

THE COURT: Oh, no, this is admissible. Of course, it wouldn't have been admissible originally. It is admissible as rebuttal because of Marjorie Streeter's testimony that she was threatened to make the statement.

Oh, yes, I think this is admissible. You may proceed, Officer.

MR. GOLDBERG: Your Honor, may I offer this: The testimony which he is about to give is not in connection with any threats made.

THE COURT: Oh, I know, but the Government is entitled to bring out all of the circumstances surrounding the making of the statement by Marjorie Streeter; and, of course, one of the circumstances is just what did she say and did she say it voluntarily or was she induced to say it.

Yes, I am going to allow the testimony. You cannot have it one way, you know. You may proceed, Mr. Dougherty.

BY MR. DOUGHERTY:

Q. Would you tell what Marjorie Streeter said? A. She stated that

131 she and her boy friend, whom she identified as Junior Walker, and another friend, whom she stated she knew as T, went to Southwest, went to Paul Munson's house.

She stated at that time a boy named Paul, to my recollection. House on M Street, corner of 4th and M Street, S. W. Paul was not at home. They went from there to 6th Street, to Paul's girl friend's mother's house, is my recollection. There they met up with Paul.

They went back to Paul's house, located at 452 M Street, S. W.; went upstairs, where they were joined by a man she knew as Leroy and Leroy's

brother. She knew them as the Wash brothers, is my recollection.

All the men, she said, went into another room and talked for a while and came out and left. They came back shortly; stayed for a while; and picked up some bags and left again.

They came back in a couple of hours and told her and the other girl, whom I think was identified as Theresa -- said: Come on, we are going up Northwest. They went downstairs, across the street there was a car parked which she says was one of the Wash boys' car; and told them to get in the car.

She tried to get in the car and she said the car was so full of boxes she couldn't get in. And some of the men moved the boxes around and she says she opened up one of the boxes. Said it was whiskey in the boxes.

132 Says they moved the boxes around so she and Theresa could squeeze into the car.

Junior told -- no -- she says that Paul went into the alley; got another box; tried to get it into the car, but couldn't get it into the car because it was so full.

She said at this time Junior told T and Paul to catch a cab and meet them up in Northwest. So they drove to Northwest in Washington's car, where they got out, and Paul and T met them; they unloaded the whiskey from the car and carried it into the house in Northwest. It is my recollection, 458 K, N. W.

They went in and had a drink, some of the whiskey. They had lots of money. They divided some of the money up; they had some jewelry. She stated that she didn't get any of it. Said she did drink some of the whiskey.

And she did say she was mad with Junior because Junior owed her some money and wouldn't give her any of that money to pay her back some of the money that Junior owed her.

They left there and she stated that Junior and some of the other men were supposed to carry some whiskey to Baltimore and sell it and come back and split up that money.

I said: Is that all you know about this? She says: Well, yes, that is about all I know. I said: Do you know what store they went into? She said: They

didn't tell me what store they went into, but I know they went into the drug store across the street.

133 I said: Well, are you willing to face Munson who is upstairs? We just brought him in and she had seen him. And she says: Yes, I ain't going to jail for nobody because I got kids and I got to take care of them.

We went upstairs. I talked to Munson. Then Marjorie was brought in. Marjorie repeated --

THE COURT: I think the testimony should be confined to any conversation Marjorie Streeter and the officer had, in view of the issue involved.

MR. DOUGHERTY: Thank you, Your Honor. I have no further questions of the officer.

CROSS EXAMINATION

BY MR. GOLDBERG:

Q. Officer Wesley, you are testifying right here now from simply your memory? A. Yes, sir.

Q. You haven't refreshed your recollection by reading anything or speaking to anyone? A. Since when, sir?

Q. Since the occurrence that you are referring to today. A. We have

134 spoke of the case over the last couple of months on several occasions probably.

Q. Have you had any occasion to refresh your recollection by any conversations with anyone today? A. No, sir. I haven't refreshed my recollection today. I was told on the telephone that they wanted me here as a rebuttal witness by Detective Veery.

Q. Now, Officer Wesley, I am going to show you a statement which has been introduced as Defendant's Exhibit No. 1.

THE COURT: No, just a moment. It has not been introduced.

MR. GOLDBERG: For identification, I am sorry.

THE COURT: It has been marked for identification. That is different.

BY MR. GOLDBERG:

Q. It has been marked for identification Defendant's Exhibit No. 1, for

identification. A statement signed by Marjorie Streeter. Would you look at that, sir, and indicate whether that is the statement that was signed in your presence? A. Yes. I didn't sign this. It was given in my presence.

Q. Did you sign it as a witness, sir? A. No, sir. I don't see my name on here, sir. But I was present when this statement was given at the
135 Fourth Precinct; and I believe Detective Edmunds typed it up.

Q. Would you say that from your recollection everything that you have testified to now is incorporated in this statement? I mean, the substance of what you testified? A. I glanced over it briefly. I can read it word-for-word and see.

Q. Would you be good enough to read it, sir? A. Do you want me to read it aloud?

Q. No, sir.

THE COURT: No, no.

BY MR. GOLDBERG:

Q. Read it to yourself. A. There are a few things --

Q. Just a moment, sir. There is no question.

THE COURT: There is a pending question. Let him answer the question.

THE WITNESS: There are a few things in here that I didn't mention and there are a few things that I mentioned that are not in here.

MR. GOLDBERG: Now, I would like to introduce this statement in evidence, Your Honor, as Defendant's Exhibit No. 1.

MR. DOUGHERTY: No objection, Your Honor.

THE COURT: It may be admitted.

136 (Whereupon Defendant Walker's Exhibit No. 1 was received in evidence.)

THE COURT: It may be read to the Jury.

MR. GOLDBERG: May I interrogate on it?

THE COURT: It is in evidence. Let it be read to the Jury.

MR. GOLDBERG: This is a statement --

THE COURT: Oh, no, no. Step back there. You are reading for everyone.

You can stand either in that aisle or in your own aisle.

MR. GOLDBERG: "This is a statement of Marjorie Janice Streeter, Colored female, 22 years, 540 9th Street, S. E., taken at 8:30 p. m., August 21, 1958 in the Detective Office of Number Four Precinct, relative to the incident and of her own knowledge concerning the housebreaking and attempted safe job which occurred on August 19, 1958."

THE COURT: I suggest you read a little slower so we can all follow it.

MR. GOLDBERG: "In the Siegle's Drug and Liquor Store, located at 1129 4th Street, S. W. "Do you give this statement of your own free will? "I will. "Just before it got dark on Monday just past, T, me and Junior walked down to Southwest and went to Paul Munson's house. He wasn't home."

137 THE COURT: Read it a little slower, Mr. Goldberg.

MR. GOLDBERG: "We went around on 6th Street, where we found Paul and Theresa, and we all returned to Paul's house.

"Paul, T, Junior kept going in and out of the house and about 9:30 p. m., Leroy and Mack came in and they all talked together in the kitchen. Paul came into the bedroom and got a big paper bag and all the men left the house.

"About two hours later, the men came back to the house and told me and Theresa to come on. Me, Leroy, Paul and Theresa went downstairs to get in the car. I saw a lot of boxes in the car and I asked how we were going to get in the car. The men took some of the boxes that were in the rear seat and put them in front. Paul Munson went in the back of the alley and got another box and he tried to get it in the car, but there wasn't any room and he took it up in his house.

"I got in the car and pulled one of the boxes and there was whiskey in it. Then Leroy pulled off and pulled up to the supermarket on 4th Street and parked and waited, because he was going to tell Paul and T where to go to Northwest. Somebody told T to get Paul and to catch a cab and come up to Northwest. Paul and T came up on K Street in about half hour. We were all worried because it took them so long.

"They split up the whiskey among them. Each one took a big box. Paul

138 got the little box. T got the other little one. I didn't see any green money but I did see some change. They were all fussing about how much money they each got.

"I can read and read this statement and it is true to the best of my knowledge."

Signed, "Marjorie Janice Streeter, Private Edward Palatta, Herman D. Evans, Number Four Precinct."

BY MR. GOLDBERG:

Q. Now, Officer Wesley, is Junior Walker's name mentioned in any portion --

THE COURT: No, no, no. The document speaks for itself.

MR. GOLDBERG: I have no further questions.

THE COURT: Anything further?

MR. DOUGHERTY: No, thank you, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: The officer may be excused.

(Witness excused.)

THE COURT: Well now, do you have any further rebuttal?

MR. DOUGHERTY: No, thank you, Your Honor.

THE COURT: Now, is the only thing left the witness who is being brought up from Lorton, or is there anything else? If there is anything else, let's do it now.

139 MR. GOLDBERG: I don't think there is anything else, Your Honor, except for the one witness, Clinton Jacobs.

THE COURT: You say you don't think so. Are you sure?

MR. GOLDBERG: I am certain.

THE COURT: I am afraid we will have to recess for our luncheon recess at this time. I dislike to lose this time but it has to be done. There is a matter that I can take up at the bench before we recess, but the Jury may be excused until one-forty-five.

(Whereupon the Jury was excused.)

THE COURT: Will counsel come to the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: Are there any requests for instructions?

MR. DOUGHERTY: I have no requests, Your Honor.

THE COURT: I suppose you rely, do you not, Mr. Dougherty, on the inference to be drawn from possession of recently stolen property?

MR. DOUGHERTY: Yes, Your Honor.

THE COURT: Have you any requests for instructions, Mr. Winston?

MR. WINSTON: I haven't written any out.

THE COURT: You don't have to write them out. I will take them orally if you have any.

MR. WINSTON: May I give them to you when I come back?

140 THE COURT: I thought I would utilize the time now. Very well.

MR. WINSTON: May we do that? I don't think it will take long.

THE COURT: Have you any, Mr. Goldberg?

MR. GOLDBERG: I think I will have, sir.

THE COURT: Let me have them now.

MR. GOLDBERG: Simply the fact that possession is not indicative of the housebreaking, does not substantiate the charges that have been given in some form or another.

THE COURT: I am going to deny your request and I am going to instruct the Jury just the opposite, that the Jury has a right to draw an inference from the fact that if a defendant is in possession of recently stolen property and has failed to explain that possession, that the possessor is the housebreaker or the thief, as the case may be.

I am also going to add that the Jury is under no obligation to draw that inference, but it has the right to do so.

MR. GOLDBERG: I would like the Court's permission to think about further instructions over the noon recess.

THE COURT: Yes.

MR. GOLDBERG: And present them to His Honor.

THE COURT: Very well. Now, Mr. Winston.

MR. WINSTON: Yes, sir.

141 THE COURT: I am going to ask you the question that I always ask counsel whose client does not take the witness stand. It is the option of defense counsel to determine whether an instruction should be given to the Jury that no adverse inference should be drawn from the failure to take the stand, or that no mention should be made of that fact. Which would you prefer?

MR. WINSTON: You give me the option, sir?

THE COURT: You have the option.

MR. WINSTON: I see. I would say that I would request Your Honor humbly to charge the Jury that they can draw no inference from that.

THE COURT: I shall do that, if that is your request. I think that I ought to tell you that most lawyers, especially the experienced criminal lawyers always say, I would rather Your Honor wouldn't say anything about it.

MR. WINSTON: I think I am going to talk about that in my closing.

THE COURT: Talk about what?

MR. WINSTON: The fact that my man didn't get on the stand. I just want to tell them basically that we consider that the case was not strong enough against my man, he is somebody who was just mentioned incidentally several times and, therefore, we felt that the case did not warrant his getting on the stand. That is the point I shall make.

142 THE COURT: Of course, you must realize that your personal feeling you may not discuss.

MR. WINSTON: Yes, sir.

THE COURT: Of course, you have a right to argue that it was not necessary for your client to take the witness stand because you don't think the case is strong enough. I, personally, from my own experience, many

years' experience on the bench, think that you will find that argument not very impressive with the average jury. However, you have the right to make the argument.

MR. WINSTON: Well, I will consider that, sir. Thank you.

THE COURT: You had better think about this during the noon recess.

MR. WINSTON: I shall.

MR. GOLDBERG: I am going to renew my motion at the end of the rebuttal.

THE COURT: I think you had better do that at the close of your testimony. However, you may make your motion now, Mr. Winston, if you wish.

MR. WINSTON: I do renew my motion for a judgment directing dismissal in the case.

THE COURT: Judgment of acquittal. Motion denied.

143 MR. WINSTON: I think especially, Your Honor, with respect to the first count.

THE COURT: Motion denied. I think there is circumstantial evidence justifying submission of the case to the Jury.

Very well, gentlemen.

(Whereupon at 12:25 p. m., the hearing was recessed, pursuant to reconvening at 1:45 p. m. of the same day.)

* * * * * * * * *

144 AFTERNOON SESSION

(Whereupon the hearing reconvened at 1:45 p. m.)

THE CLERK: United States v. George Washington and Ernest Walker.

MR. GOLDBERG: Your Honor, may we approach the bench?

THE COURT: Yes.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. GOLDBERG: During the noon recess, it came to my attention that there were several questions that I would like to present to Mrs. Marjorie Streeter in rebuttal of Officer Wesley's rebuttal testimony. I would ask you,

sir, if you would like me to indicate what it would be. I would be glad to do so.

THE COURT: Well, you have a right to call her in sur-rebuttal, of course.

MR. GOLDBERG: Yes.

THE COURT: That is a matter of right and not a matter of res; but it seems to me you should finish your case first.

MR. GOLDBERG: Well, she was my witness, sir.

THE COURT: Oh, I know, but I just asked the Government to put on its rebuttal before you closed your case so as not to waste the time while we were waiting for your witness. I think you should close your case first, and then you can recall Marjorie Streeter in surrebuttal.

145 MR. GOLDBERG: Yes, sir, thank you, sir.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

MR. GOLDBERG: Call Clinton Jacobs.

Whereupon --

CLINTON JACOB

was called as a witness by Defendant Walker and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q. Would you state to the Court and Jury your full name, sir? A. My name is Clinton Jacob.

Q. Mr. Jacob, would you give us your address as of August 18, 1958? A. August 18, I was living at 458 K Street, N. W., Washington.

Q. How long had you lived at this address? A. I would say around about nine months.

Q. Did you lease this or did you rent this? A. I rented the place.

Q. Did you have an apartment or what were your accommodations? A. I had a room.

Q. Where was your room located? A. On the first floor front.

146 Q. Now, did anyone live with you? Was there anyone else connected with

you in the leasing of this room? A. When I moved in the place, me and my girl friend moved in.

Q. Did your girl friend continue to live there with you? A. At a time when she left.

Q. And when did she leave? A. I couldn't say approximately; I mean, about three months after I had moved in.

Q. Did anyone else come to live with you at 458 K Street? A. Well, no one.

Q. No one? A. No one lived with me. I lived alone.

Q. Now, Mr. Jacob, directing your attention to August 18, 1958, did you have occasion at any time to know of or be connected with or in any way be aware of the fact that a liquor store on 4th Street had been broken into that evening? A. Well, yes, I have.

Q. How did this come to your attention?

THE COURT: Now, just a moment. Will counsel come to the bench.

147 (Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: What are you trying to bring out with this witness; or what do you expect to elicit from the witness?

MR. GOLDBERG: This witness will testify to the fact that just as he testified in his last case --

THE COURT: I don't care about that. Tell me what you expect to elicit from him.

MR. GOLDBERG: That Ernest Walker had nothing to do with the housebreaking or larceny.

THE COURT: Did he participate in it?

MR. GOLDBERG: Apparently he was convicted of it.

THE COURT: I see. Very well. That is all right. That is proper.

MR. GOLDBERG: Thank you, sir.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

MR. GOLDBERG: Would you --

THE WITNESS: You asked me were I aware of the fact of seeing a store being broken into.

MR. GOLDBERG: Oh, yes.

BY MR. GOLDBERG:

Q. Whether you had any connection or any knowledge of it. A. Well, I was standing on the corner of 4th and M and --

148 THE COURT: What is your question, Mr. Goldberg?

MR. GOLDBERG: My question, sir, is whether or not Mr. Jacobs knows of the incident that took place.

THE COURT: Do you know? Just answer, yes, or no.

THE WITNESS: Yes.

BY MR. GOLDBERG:

Q. Can you tell us how you became aware of this? A. I was standing on the corner with a friend talking; he was waiting on a streetcar, the bus; and I turned around and I observed someone coming from out the store, back entrance.

THE COURT: You were waiting for a streetcar when you saw this break-in; is that it?

THE WITNESS: I wasn't waiting for a streetcar, a bus.

THE COURT: You were waiting for a bus?

THE WITNESS: My friend was waiting for a bus and I was talking with him.

THE COURT: I see.

BY MR. GOLDBERG:

Q. Now, Mr. Jacobs, did you have occasion to see this store being broken into? A. From where I was, I couldn't observe the back, but on the side.

Q. At that time, sir --

MR. GOLDBERG: Stand up.

(Whereupon the Defendant Walker stood up.)

149 BY MR. GOLDBERG:

Q. Do you know this Defendant Ernest Walker? A. I know him, know of him but not say know him.

Q. How often have you had occasion to be with him or meet with him?

A. I don't understand what you mean by meet with him.

Q. Have you known him for some time? A. Yes.

Q. Did you at any time witness him at the scene of this alleged robbery, housebreaking? A. No, he wasn't implicated in it.

Q. He wasn't implicated in it?

THE COURT: Oh, no. The question is, did you see him there?

THE WITNESS: I did not see him there.

THE COURT: You did not see the whole housebreaking; did you?

THE WITNESS: Well, I couldn't say the whole housebreaking because I could only observe the entrance that they went in and came out.

BY MR. GOLDBERG:

Q. Did you see him go in? A. I did not see him go in or come out neither.

MR. GOLDBERG: No further questions.

MR. WINSTON: May I ask a question, Your Honor?

150 THE COURT: Just a moment. Are you cross examining him? You have rested, you know.

MR. WINSTON: As long as he is a witness there --

THE COURT: I beg your pardon?

MR. WINSTON: As long as he is a witness there, I would like to ask him whether he knows the Defendant.

THE COURT: Do you want to make him your witness or do you wish to cross examine him? Which is it?

MR. WINSTON: No questions.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. DOUGHERTY:

Q. Are you the same Clinton Jacobs who was convicted of unauthorized use of a motor vehicle in 1942? A. I imagine I am, yes, sir.

Q. And are you the same Clinton Jacobs who was convicted of housebreaking

in 1951? A. Yes, I imagine I am.

Q. And are you the same Clinton Jacobs who was convicted of assault and battery and resisting an officer in 1950? A. I don't understand the date of that.

Q. It was on October 6, 1950, at Philadelphia, Pennsylvania. A. I think you have confusion in the date.

151 THE COURT: Well, were you convicted in Philadelphia?

THE WITNESS: I wasn't convicted of the charges that he said I was convicted of; but I was convicted of a charge in Philadelphia.

BY MR. DOUGHERTY:

Q. What was the charge in Philadelphia you were convicted of? A. I was convicted of carrying a dangerous, concealed weapon, a pair of knuckles.

MR. DOUGHERTY: No other questions, Your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. GOLDBERG: Your Honor, I would like to approach the bench a moment.

THE COURT: Yes, indeed.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: Now, go ahead.

MR. GOLDBERG: At this time I would like to reiterate my motion for dismissal of the indictment.

THE COURT: You are not putting on any surrebuttal?

MR. GOLDBERG: I am.

THE COURT: If you want to renew the motion, you have to do it at the close of the testimony.

MR. GOLDBERG: Your Honor, I was just wondering whether or not the

152 Government is going to put on additional rebuttal?

THE COURT: Mr. Goldberg, let me remind you of the proper procedure. Of course, you may make the motion now, if you choose, but it won't do any good.

MR. GOLDBERG: Yes, sir, I see.

THE COURT: You have to make the motion at the close of the entire case. Mr. Winston made the motion at the close of his entire case. But as far as your client is concerned, you have to make your motion at the close of your entire case.

MR. GOLDBERG: Yes, sir.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

THE COURT: Anything further, gentlemen?

MR. GOLDBERG: I would like to recall Miss Marjorie Streeter.

THE COURT: For surrebuttal?

MR. GOLDBERG: Yes, Your Honor.

THE COURT: Very well.

MR. GOLDBERG: Miss Streeter.

Whereupon --

MARJORIE STREETER

was recalled as a witness by the Defendant Walker and, having been previously duly sworn, was examined and testified as follows:

153 DIRECT EXAMINATION

BY MR. GOLDBERG:

Q. Miss Streeter, I want to remind you that you are still under oath. A. Yes.

THE COURT: I didn't catch your question.

MR. GOLDBERG: I wanted to remind the witness that she is still under oath.

THE COURT: No, no, no; you may not remind a witness of anything. You may just ask questions. The only person who may remind anybody of anything is the Court.

BY MR. GOLDBERG:

Q. Mrs. Streeter, on the 21st of August, did you have occasion to meet an Officer Wesley? A. Yes, I did.

Q. Would you tell the Court and Jury where you met Officer Wesley? A.

Officer Wesley, Detective --

THE COURT: Just a moment. She testified about that. You brought all this out on her direct examination.

MR. GOLDBERG: Your Honor, this is in surrebuttal of Officer Wesley's testimony.

THE COURT: I know, but surrebuttal doesn't mean you can reiterate prior testimony. She testified previously as to her conversation with Officer Wesley; and Officer Wesley was called by the Government in rebuttal and gave a different
154 version of the conversation. Now then, you can't call her in surrebuttal to repeat her original version. That just is not proper.

MR. GOLDBERG: May we approach the bench, Your Honor?

THE COURT: Yes, yes.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. GOLDBERG: Your Honor, this is not a repetition of her original testimony. This is in conflict with Officer Wesley.

THE COURT: She was already in conflict.

MR. GOLDBERG: This is in deeper conflict. This goes to the credibility of the officer.

THE COURT: No. She told her version of the conversation between her and the officer; the officer has told his version; and she can't go back in surrebuttal to elaborate on her version.

MR. GOLDBERG: This is not an elaboration. It is additional facts which I think are --

THE COURT: That is not rebuttal. It relates to the same conversation. What do you propose to bring out?

MR. GOLDBERG: I propose to bring out, sir, that Officer Wesley came to her house on the morning of the 21st of August and took her to the Fourth Precinct and there kept her for a period of twelve hours at the time she gave this
155 statement.

THE COURT: Now, that I will allow, because that doesn't relate to the

conversation of the 23rd of August.

MR. GOLDBERG: No, sir.

THE COURT: But what happened on the 23rd of August, she has given her testimony on that; the officer has given his; and that ends the matter. She can't go back of that. Is the officer here? You had better have him here.

MR. DOUGHERTY: I made arrangements for him to be here. I checked with Captain Slominski at 1:15. I said I wanted him at 1:45.

THE COURT: I want him here.

MR. DOUGHERTY: Did Your Honor excuse the officer earlier?

THE COURT: I am not sure whether I did or not. Of course, I may have excused the officer, but it is up to counsel to watch that. Have you arranged for him to be here?

MR. DOUGHERTY: Yes, I have, Your Honor.

THE COURT: Why didn't you bring that out before?

MR. GOLDBERG: I was not aware of this until Officer Wesley testified to this, testified as he did this morning. I was not aware that I would have this testimony this afternoon.

THE COURT: I understand; but you questioned Marjorie Streeter as to how she came to make that statement.

156 MR. GOLDBERG: Yes, I did, sir, but you permitted Officer Wesley to bring in collateral issues and statements.

THE COURT: No, I did not permit him to do that.

MR. GOLDBERG: It wasn't collateral, sir; I beg the Court's pardon; but it was up to the time of giving this statement. Consequently, those factors --

THE COURT: Well, personally, I think you should have brought it out before, but in the interest of justice, I will let you bring it out.

MR. GOLDBERG: Thank you, sir.

THE COURT: But don't go over again as to what happened on the 23rd.

MR. GOLDBERG: No, sir; this is the 21st of August when she was taken to the jail. I am permitted to do that.

THE COURT: Very well. If you get her to perjure herself, I will commit her.

MR. GOLDBERG: I assume she is not perjuring herself. I assume she is telling the truth.

THE COURT: You had better check on the officers.

MR. DOUGHERTY: Would Your Honor indulge me for just one second?

THE COURT: Yes, indeed.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

157 CAPTAIN SLOMINSKI: May it please the Court, I contacted the two officers and they will be here within the next five minutes.

THE COURT: Thank you. The Court appreciates your cooperation. You may proceed, gentlemen.

MR. GOLDBERG: Would the reporter be kind enough to repeat --

THE COURT: No; start over.

BY MR. GOLDBERG:

Q. Miss Streeter, directing your attention back to the 21st of August, did you have occasion to talk to a Detective Wesley? A. Yes, I did.

Q. Where did that take place? A. At 310 10th Street, S. E., which was my home.

Q. What time was this? A. It was around ten o'clock that morning.

THE COURT: What morning?

THE WITNESS: I don't know the exact date. You will have to repeat the dates.

BY MR. GOLDBERG:

Q. Would it refresh your recollection if I indicated the date that I originally stated to you, the 21st of August? A. Yes, it would, yes.

158 THE COURT: No, no. I don't think you have a right to do that. I am going to strike out that answer, and the question.

BY MR. GOLDBERG:

Q. Did you leave your home? A. Yes, I did. Detective Wesley, Detective Evans and another detective took me from my home to Number Four Precinct.

Q. And what time did you get to Number Four Precinct? A. Well, it couldn't have been over twenty minutes, fifteen minutes at the most.

THE COURT: What time?

BY MR. GOLDBERG:

Q. What time? A. I don't know. I say, maybe ten-twenty, ten-fifteen.

THE COURT: In the evening or in the morning?

THE WITNESS: In the morning.

BY MR. GOLDBERG:

Q. During that day, you made certain statements. Now, what time did you leave the precinct that night? A. I left the precinct at ten o'clock or ten-thirty that night.

Q. In other words, is it your testimony that you were at the precinct from ten o'clock in the morning --

THE COURT: Please don't summarize her testimony. Just ask questions.

159 BY MR. GOLDBERG:

Q. When did you make that statement? A. I don't know. I guess it was around eight or eight-thirty that night.

MR. GOLDBERG: No further questions.

CROSS EXAMINATION

BY MR. DOUGHERTY:

Q. Could you tell me what date this was? A. I couldn't tell you exactly. I have heard the lawyer say it was August 21. I couldn't keep the dates in my mind that long.

THE COURT: What day of the week was it; do you remember?

THE WITNESS: I don't know which day of the week it was.

BY MR. DOUGHERTY:

Q. Where did you make the statement? A. At Number Four Precinct.

Q. Where? Upstairs or downstairs? A. Upstairs and I think what they call the interrogation room.

Q. And when was the first time you saw Officer Wesley on that date? A. At my home, 310 10th Street, S. E., at around ten o'clock that morning.

Q. Was there anyone else at your home? A. My mother and my husband.

160 Q. What is your husband's name? A. Joseph Dennis Streeter.

MR. DOUGHERTY: I have no other questions.

THE COURT: Step down.

(Witness excused.)

MR. GOLDBERG: The defense of Ernest Walker rests, Your Honor. Your Honor, may I ask the Court whether we can introduce in evidence the indictment charging --

THE COURT: No, just a moment. Come to the bench, please.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: What do you want to do?

MR. GOLDBERG: I would like to introduce into evidence the indictment, simply because --

THE COURT: What indictment?

MR. GOLDBERG: The indictment against Ernest Walker.

THE COURT: In this case?

MR. GOLDBERG: Yes, sir.

THE COURT: You don't introduce it into the record. It is part of the record.

MR. GOLDBERG: Can it be read to the Jury?

THE COURT: Of course. In fact, the Jury gets the indictment when it goes to the jury room.

161 MR. GOLDBERG: It has never been mentioned as of this point, and I was wondering whether we would specifically have to introduce it in evidence.

THE COURT: No, no.

MR. GOLDBERG: Could it be read to the Jury at this point?

THE COURT: Not at this point. You have a right to read it, if you want to in your summing-up speech. As a matter of fact, it has been referred to. Mr. Dougherty referred to it in his opening address. What have you in mind?

MR. GOLDBERG: To point out the tremendous variances.

THE COURT: You can argue that. I am going to say this to you gentlemen. That if it weren't for the testimony of the $281; there would be no grand larceny charge here, because the inventory, the statement as to the quantity

of liquor stolen is too indefinite to justify sending anybody to the penitentiary on. But I think I might mention to you gentlemen, so as to simplify your task there, so far as the grand larceny charge is concerned in the second count, it is going to go to the Jury just on the testimony that $281 was stolen.

MR. GOLDBERG: Your Honor, may I bring out the fact that there was no corroboration that any of these men ever had the $281.

162 THE COURT: You have a right to argue all that in your summing-up speech. That is what arguments are for. Is your witness here?

MR. DOUGHERTY: He just walked in.

THE COURT: Very well.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

THE COURT: Do you wish to offer any further testimony?

MR. DOUGHERTY: Would Your Honor indulge me just a moment, please?

THE COURT: Yes, surely.

MR. DOUGHERTY: May I call Officer Wesley, please?

THE COURT: Yes, indeed.

Whereupon --

HENRY H. WESLEY

was recalled as a witness by the Government and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOUGHERTY:

Q. Officer Wesley, could you tell His Honor and the ladies and gentlemen of the Jury when you first saw Marjorie Streeter on the 21st of August, 1958?

A. It was approximately five-thirty to six p. m., at the Fourth Precinct, Southwest.

MR. DOUGHERTY: I have no other questions.

163 THE COURT: Did you call at her home and ask her to accompany you to the Fourth Precinct that morning?

THE WITNESS: No, sir, not myself.

THE COURT: Did anybody from the Police Department?

THE WITNESS: It is my recollection that, Detective Veery could probably answer that better than me. It is my recollection that Detective Veery, along with other officers, brought her to the Fourth Precinct immediately before I saw her.

THE COURT: But you did not call on her home and bring her there?

THE WITNESS: No, I did not.

THE COURT: Any cross examination?

MR. GOLDBERG: Is there any other officer by the name of Wesley connected with the Fourth Precinct or connected with the detective division that you are aware of?

THE WITNESS: Not to my knowledge.

MR. GOLDBERG: No further questions.

THE COURT: Step down.

(Witness excused.)

THE COURT: All parties rest?

MR. DOUGHERTY: Yes, Your Honor.

MR. GOLDBERG: Yes, Your Honor.

THE COURT: Very well. You may come to the bench, gentlemen.

164 (Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: Now is the time to renew your motion.

MR. GOLDBERG: I move to dismiss the indictment.

THE COURT: No; you move for judgment of acquittal.

MR. GOLDBERG: For the Government's failure to establish a prima facie case.

THE COURT: Motion denied.

MR. GOLDBERG: For failure of the Government to prove the guilt of Ernest Walker beyond a reasonable doubt.

THE COURT: That is the same motion. The Government has to make a prima facie case under the decision of the Court of Appeals in Curley v. The

United States. It is the Jury that determines whether the proof is beyond a reasonable doubt. If there is substantial evidence, the Court has to submit the matter to the Jury. The Court doesn't determine whether it is sufficient beyond a reasonable doubt. Now, you gentlemen wanted an opportunity to give some thought to any possible requests for instructions.

Are there any requests for instructions?

MR. DOUGHERTY: I have none.

MR. GOLDBERG: General instructions.

THE COURT: Do you have any?

MR. WINSTON: May I refer to four of them, sir? First of all, Your Honor, I presume, will charge beyond a reasonable doubt.

165 THE COURT: Of course.

MR. WINSTON: I know you will do that. Will Your Honor instruct with reference to the fact that the jury may convict one or both or none?

THE COURT: Of course.

MR. WINSTON: I figured you did, sir.

THE COURT: I shall instruct them that they have to bring in a separate verdict as to each Defendant.

MR. WINSTON: All right. Now, would Your Honor instruct with reference to the discrepancy which we will call attention to between the indictment and the testimony?

THE COURT: No. You can argue that in your summing up, if you wish. I shall not refer to it.

MR. WINSTON: I see. May I withdraw my assent to what I said before? I am going to take Your Honor's suggestion, or at least what you referred to, and may I say I will not refer to it in my closing, the fact that my client did not take the stand, and I humbly ask Your Honor not to refer to it.

THE COURT: I shall not refer to it. You understand it is your decision and not mine.

MR. WINSTON: I realize that. Your statement or the suggestion is the distillation of years of experience. Are we allowed to refer to the previous trial

at all? It was not mentioned here.

166 THE COURT: No. In the first place, it is not in evidence.

MR. WINSTON: No.

THE COURT: And in the second place, it would be very undesirable from your standpoint.

MR. WINSTON: I realize that.

THE COURT: I wouldn't think of permitting the Government to refer to it.

MR. WINSTON: May I refer to the fact that I was appointed? So was Mr. Goldberg.

THE COURT: No. It is none of the Jury's business whether counsel have been retained and paid by the Defendants or whether counsel were appointed by the Court.

MR. WINSTON: Then that is all.

THE COURT: Do you have anything, Mr. Goldberg?

MR. GOLDBERG: No, sir.

THE COURT: How much time do you want in summing up?

MR. DOUGHERTY: Your Honor knows I will be brief. Maybe ten minutes.

THE COURT: There is no maybe. If you say ten minutes, you cannot take ten and a half. Ten minutes?

MR. DOUGHERTY: Ten minutes.

THE COURT: How much do you want?

MR. WINSTON: May I have fifteen minutes?

167 MR. GOLDBERG: Fifteen minutes, sir.

THE COURT: Each of you may have fifteen minutes; and you may have fifteen minutes.

MR. GOLDBERG: The Government opens.

THE COURT: Opens and closes.

MR. GOLDBERG: And we will take fifteen minutes for our complete argument, fifteen minutes each.

THE COURT: Yes. I think, under the circumstances, I will give the Government twenty minutes altogether.

MR. DOUGHERTY: Thank you, Your Honor.

THE COURT: Because you have to meet two arguments. How much time do you want to save for rebuttal?

MR. DOUGHERTY: Ten and ten, if I may.

THE COURT: Fine. Now, Mr. Dougherty knows this, but perhaps you gentlemen don't. There is no rule of law requiring counsel to exhaust their maximum time.

MR. GOLDBERG: No; we understand that.

MR. DOUGHERTY: While we are here, may I thank the Court for its indulgence for the impositions we have caused you in this trial.

THE COURT: No, that is all right. After all, we are searching for justice.

MR. GOLDBERG: Thank you, Your Honor.

MR. WINSTON: Thank you, Your Honor.

THE COURT: Gentlemen, here is what I am going to do. I am going to let
168 you sum up; and I am not going to submit the case to the Jury this afternoon, because it would be too late. I will let you sum up and recess the trial until tomorrow morning and take up another case this afternoon. I will instruct the Jury the first thing in the morning.

MR. GOLDBERG: Thank you.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

THE COURT: Mr. Dougherty, you may proceed.

ARGUMENT BY COUNSEL FOR THE GOVERNMENT

MR. DOUGHERTY: May it please the Court, ladies and gentlemen, in this case the facts are these: A combination liquor store and drug store was broken into. That is uncontested.

We know that $281 in money was taken. We know that another amount of jewelry was taken; and you heard Mr. Jacobson testify that approximately 100 or over a hundred and ten cases of whiskey were stolen.

Now, the next witness in the case, Mr. Shippy, testified that he saw both

Defendants at 458 K Street, N. W. He testified that they, with others, were unloading boxes from a car. He said that he read the labels on the boxes. The labels were Seagrams 7 Whiskey; and I think he said Kentucky General. He said that he read these labels on the box.

He said these people stayed there a matter of about five, ten minutes, and they left. He said there were about five people.

169 You heard Theresa Williams say she was with Marjorie Streeter, she was with Junior Walker, as she called him, and that Junior Walker drove this car from Southwest about a block away from the liquor store up to this address in Northwest.

She said she didn't know the address. She had been drinking. She said that the Defendant George M. Washington was by the car; that he didn't ride in the car; he was told to take a cab; and later he appeared at 458 K Street.

Then you heard Marjorie Streeter say that she saw the Defendant Washington by the car in Southwest; but you saw that she told generally the same story that you heard from the other witnesses. That you can draw an inference from. But the only thing different, she said, was that Junior Walker had nothing to do with this. But she also said that Junior Walker was her boy friend.

Now, at this address, 458 K Street -- where three people placed both Defendants; Mr. Shippy places them there; Theresa Williams places them there; and Marjorie Streeter places them there at this residence -- was found all these articles that have been admitted into evidence. The stamps from the liquor store, bearing the same number, the number that Mr. Jacobson said was his, 9594 I believe it was. Found watches that Mr. Jacobson said definitely

170 came from the store. One of them, he testified, he recognized because it was his handwriting and because he had made out the tag.

That, simply stated, is the case. You have three people who say that they saw the Defendants at 458 K Street and you have tangible evidence of the things that were stolen from Mr. Jacobson's store.

At the proper time, ladies and gentlemen, I ask you to bring in the proper verdict.

THE COURT: Mr. Winston.

ARGUMENT BY COUNSEL FOR DEFENDANT WASHINGTON

MR. WINSTON: May it please the Court, ladies and gentlemen of the Jury: I think the key to the whole situation here is a word that was just used by the Assistant United States Attorney. He said, "inference."

Remember, please, that the Defendant whom I am defending in this case is Mr. George M. Washington, who sits over there; and I think that everything in this case with reference to him has been inference.

I hesitate to think that a Jury would convict this man of a crime. He is in the nature of the little man who wasn't there. You heard reference to him a couple of times, a few times. As a matter of fact, I wasn't sure on several occasions whether they were referring to him or to his brother, Francis Washington, who is not in Court and who is not a Defendant here.

171 I assure you I would be confused about this, except that I know that this is the Defendant whom I am representing here and that he was mentioned incidentally throughout the matter.

I think the Assistant United States Attorney referred to the fact that Theresa Williams testified. Well, I don't want to characterize anybody, but she admitted she had done so much drinking that she was virtually in a stupor. And she saw people. She said she saw the Defendant whom I represent. But she fell asleep and slept most of the time. And she doesn't know when they went out, if they went out; and she doesn't know when they returned, if they returned. So her testimony, it seems to me, with reference to Mr. Washington, the Defendant Washington certainly has no effect whatsoever.

Now, the only connection, as I see, mentioning the Defendant Washington, is the fact that one of the witnesses, Mr. Shippy, said that he saw him carrying some boxes.

He saw boxes. This was one-thirty in the morning. He had been to a night club. And though there is no evidence as to the condition that he was in when he returned, it seems to me that the details he described were a lot too accurate, a lot too detailed to have been really the things that he saw at that time.

172 Now, the Witness Streeter and the Witness Williams, they were talking about a car. They said that the Defendant Washington was not in any car. He was around. They mentioned him a couple of times. But they have never connected him with anything in connection with this crime.

I would say, if I happened to be there at the time, and if I gave a hand to carrying some bundles, they would have me in this case, too. I don't think there is enough there to satisfy a jury that a man should be convicted on evidence which is certainly not beyond a reasonable doubt.

Now, may I read this to the Jury, Your Honor, the indictment?

THE COURT: The what?

MR. WINSTON: The indictment.

THE COURT: Oh, yes, indeed. The indictment is part of the record. It will go to the Jury when the Jury retires. You have a right to read it.

MR. WINSTON: Thank you.

I want to read the indictment. You remember the testimony of Mr. Jacobson. He said he didn't see my client at all. He didn't see any of the Defendants or the people that are supposed to be involved.

I assume that something happened there. I wasn't there, and nobody here that I know about was.

But let me read the indictment, if you don't mind.

173 "The Grand Jury charges: "On or about August 18, 1958, within the District of Columbia, Paul S. Munson, Clinton Jacobs, James Jacobs, Francis L. Washington, George M. Washington and Ernest Walker, entered the store of Jada, Inc., a body corporate, with intent to steal property of another."

That was the first count.

The Second count: "On or about August 18, 1958, within the District of Columbia, Paul S. Munson, Clinton Jacobs, James Jacobs, Francis L. Washington, George M. Washington and Ernest Walker, stole the property of Jada, Inc., a body corporate, of the value of about $1,081.00, consisting of the following: liquors in the amount of $500.00, costume jewelry and cigarettes in the amount of $300.00 and $281.00 in money."

And it is signed by Oliver Gasch, who is the United States Attorney in the District.

Now, note that discrepancy there. You recall that Mr. Jacobson, said, when he testified, that the amount of liquor stolen was $5200.00. That is five times as much as all the property stolen that is alleged in the indictment.

174 You will recall also that he had an inventory taken within a day or two after the crime was supposed to have been committed.

There is a big discrepancy here that I don't like, and I feel that the case is just shot full of discrepancies. There are contradictions from one place to another. Frankly, I can't clear my way through this testimony; and I hope that you can.

I do say, and the Defendant Washington rests his case upon the fact that they have never pointed the finger at him as having done anything.

I feel that this Jury will bring in a true verdict and acquit this Defendant because he has not been connected with any crime of any kind. Thank you.

THE COURT: You may proceed, Mr. Goldberg.

ARGUMENT BY COUNSEL FOR DEFENDANT WALKER

MR. GOLDBERG: May it please the Court, ladies and gentlemen of the Jury: When the Government opened its case, it made a statement to the Jury that they would prove that Ernest Walker committed the crime with which he was charged in the indictment.

This, I say to you, they have failed to do. They have indicated that he was a resident, a doubtful resident at a residence at 458 K Street. They have indicated that he was a passenger in an automobile traveling from an M Street address to 458 K Street. And that is all they have indicated.

175 They have not connected him with the robbery. They have, in fact, not even placed him near the scene of the robbery. They have simply placed him in the vicinity, two blocks or three blocks, whatever it happens to be, from the actual place in which the liquor was alleged to have been stolen.

What have they produced as evidence of a robbery which they have brought a man to indicate totaled over $5,000? They have brought a box containing cufflinks,

which they indicate is a part of the robbery, and which they admitted were not exclusive as to the property of this particular store.

They have brought a broken whiskey bottle, a half pint bottle; and they have brought some boxes which were admittedly taken from the trash in the rear of 458 K Street.

That is not evidence sufficient to convict a man and send him to a penitentiary.

And what about the $281? Where is this $281? There is no testimony that this Defendant, Ernest Walker, ever had his hands on this $281.

Even the statement which the United States Government brought to you of Marjorie Streeter indicates that, "I saw no green money. Some change was passed about."

176 Let me contend, ladies and gentlemen of the Jury, that you can also draw this inference. That a liquor store would not only have change; it would also have dollar bills to make change with the following morning.

Now, Officer Veery testified that he found these pieces of property or left over elements of the robbery, which he claims them to be, at 458 K Street. His testimony is simply that he found them there. He indicated specifically that neither my client, and I will make reference to Mr. Washington, as well, was ever in the vicinity when he found this, was ever connected with this, or there was any evidence which would connect him with the ownership of this particular property.

Mr. Shippy, exaggerating his importance as the landlord of this property, and actually he was just -- he admitted on cross examination that he was just an agent to collect the rent and to keep the place clean -- he indicated that Ernest Walker was present. But you will remember that I specifically asked him, was a woman present? And he said, no.

Marjorie Streeter said she was present. If he saw Ernest Walker, why didn't he see Marjorie Streeter? I can see how you can take terrific credence from the testimony of the man who sat there and indicated himself that he just returned from a night club at a quarter of one in the morning and saw all of this

177 in the middle of the night.

I reiterate what my associate said, that he saw boxes and he stated he never looked in the boxes to see what was in there. The only connection with liquor and with Shippy is a broken whiskey bottle which he found outside of the front of the house and placed in the cellar, where Officer Veery found it a little later on.

What if he had seen Ernest Walker at 458 K Street that night? Would this in itself be sufficient for a jury of twelve people to reach a common decision that there was a man who had committed a crime five miles away from there? I don't think you ladies and gentlemen of the Jury can possibly determine that that was the case.

Now, let's take the testimony of Mr. Jacobson. My associate has pointed out the tremendous variance of a man or men taking away 115 cases -- think of the moving van you would have to have to do that.

There was testimony by Theresa Williams that Ernest Walker drove the automobile. No one else testified to that. Ernest Walker testified that he had never had a permit to drive. He has never driven a car. He doesn't know how. And Theresa Williams admitted to me that she had been drinking the entire day and was intoxicated. Drunk, ladies and gentlemen of the jury, in common parlance. Drunk all day long. Sleeping during the afternoon. Sick when she
178 got to 458 K Street.

Can we take this evidence and give it extreme credence to send this man to the penitentiary? I don't think so.

And how about Clinton Jacobs? He comes here and gets on the stand and says, in essence: You can read between the words and between the lines. I saw it committed and this man wasn't present. I think you can give that credence.

I think you also must give credence to the fact of the convictions that have been shown for both of these men by the Government's attorney. We can't overlook that. These men have previous convictions. But don't convict a man on his previous record. Convict him on the facts and circumstances, what you heard from that chair and what you saw presented by the United States Government.

Ladies and gentlemen of the jury, they have not made a case. They have not made a case against Ernest Walker. They have not made a case and they have not convicted him beyond a reasonable doubt.

You must go into this juryroom and come back with a verdict of, not guilty, for Ernest Walker.

Thank you very much.

REBUTTAL ARGUMENT BY COUNSEL FOR THE GOVERNMENT

MR. DOUGHERTY: May it please Your Honor, ladies and gentlemen: The words circumstantial evidence have been mentioned several times in this case, several times in the argument; and you are told to shy away from circumstantial evidence. You are probably familiar with the countless plots used in the theatre and television and movies about beware of circumstantial evidence.

179 Well, certainly there is circumstantial evidence in this case; and there is also tangible evidence in this case. You see the tangible evidence before you. You see the evidence that was taken from the store in Southwest and found in Junior Walker's house, the place where he lived.

You saw the loose liquor stamps. Is it normal procedure for people, provided they buy the liquor, to carefully remove the stamps from the bottles?

You have positive identification of both defendants by people who knew them. Mr. Shippy knew them. He said that Junior Walker lived there. Theresa Williams said that she knew them. She said that she saw them both at 458 K Street. And even Marjorie Streeter, who was a defense witness, said that she knew them and that they were at 458 K Street.

Now, this is not a case of a pocketbook robbery in the dark and black, where there is a question of identification. You have the tangible evidence that was stolen from the store; you have positive identification by the three people, all of whom knew for at least some period of time both Defendants.

180 Now, ladies and gentlemen, under the circumstances, I don't see how you can possibly bring in any other verdict than that of, guilty as charged.

THE COURT: Ladies and gentlemen of the Jury, we will suspend this trial until tomorrow morning at ten o'clock. The Court is going to take up another

matter at this time. At ten o'clock tomorrow morning, the Court will give you its instructions, and then you will retire to deliberate.

In the meantime, don't start discussing this case, either amongst yourselves or at home or with anyone else.

You may be excused at this time, and please be back in the courtroom a few minutes before ten o'clcok tomorrow morning.

(Whereupon at 2:40 p. m., the hearing was adjourned, pursuant to reconvening January 7, 1959, at 10:00 a. m.)

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181 January 7, 1959

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182 PROCEEDINGS

THE CLERK: United States v. George M. Washington and Ernest Walker.

THE COURT: Ladies and gentlemen of the Jury: The Defendants, George M. Washington and Ernest Walker, are on trial on charges of housebreaking and larceny.

The indictment consists of two counts. The first count charging housebreaking, and the second count charging grand larceny. Specifically, the charges are that on August 18, 1958, the Defendants entered, that is, broke into a store owned by a concern known as Jada, Inc., at 1129 4th Street, S. W., Washington, and that they stole certain property from the store, consisting of cases of liquor, boxes of costume jewelry, cigarettes, and $281 in cash.

It now becomes your duty to determine whether the Defendants are guilty or not guilty of the charges on which they are being tried.

The indictment names several other defendants in addition to the two Defendants here on trial. You will ignore the other defendants, because at this time their case is not before the Court. The only case that is before the Court is that which involves George M. Washington and Ernest Walker.

I might say, in order to make it easier for you, that they are the last two names contained in the indictment.

183 As you know, of course, you are the final judges of the facts. My function

is to instruct you on the law; and you are obligated to follow the Court's instructions as to the law, but to decide the facts yourselves.

I also have a second function, namely, to summarize and discuss the facts or comment on the evidence to the extent to which I deem it desirable to do so, merely for the purpose of aiding and assisting the Jury in arriving at its conclusions.

While my instructions on the law are binding on you, my discussion of the evidence and the facts is not; and if your understanding of the evidence or your recollection or your view of the evidence in any way differs from mine, then it is your recollection, your understanding and your view of the evidence that must prevail, because, I repeat, the final decision on the facts is solely within your province and my instructions are binding on you only as concerns the law.

You have heard me many times during your term of service, which is now coming to an end, summarize some basic, general principles of law that are applicable in all criminal cases. Perhaps it would be hardly worth while my repeating them because you have heard me summarize them so frequently. Nevertheless, the law requires me to bring these principles to the attention of the Jury in every individual case, and I shall do so briefly.

184 First, the fact that the defendant has been indicted is not an indication of guilt, because an indictment is merely the machinery and the procedure by which a defendant is brought before the Court and is placed on trial.

Second, every defendant in a criminal case is presumed to be innocent, and this presumption of innocence attaches to the defendant throughout the trial.

Third, the burden of proof is on the Government to prove the defendant's guilt beyond a reasonable doubt. Unless the Government sustains this burden and proves beyond a reasonable doubt that the defendant has committed every element of the offense charged, the Jury must find him not guilty. But proof beyond a reasonable doubt does not mean proof beyond all doubt whatsoever. Proof beyond a reasonable doubt means proof to a moral certainty and not necessarily proof to an absolute or mathematical certainty.

By reasonable doubt, as its very name implies, is meant a doubt based

on reason and not just some whimsical speculation or some capricious conjecture.

I think you have heard me give a simple explanation of what is meant by proof beyond a reasonable doubt. Let me repeat it. It means simply this: If, after an impartial comparison and consideration of all the evidence, you can say to yourself that you are not satisfied of the defendant's guilt, then you have a reasonable doubt. On the other hand, if, after such an impartial comparison and consideration of all the evidence, you can truthfully and candidly say to yourself that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt.

In other words, proof beyond a reasonable doubt is such proof as will result in an abiding conviction of the defendant's guilt on your part, such a conviction as you would be willing to act upon in the more weighty and important matters relating to your own affairs.

185 In determining whether the Government has established the charges against the Defendants, you will consider and weigh the testimony of all the witnesses who have testified before you, as well as all the circumstances concerning which testimony has been introduced.

Frequently, circumstances cast a very illuminating light on the issues to be determined by the Jury.

You are the sole judges of the credibility of witnesses. By that I mean, it is for you and for you alone to determine whether to believe any witness, and the extent to which any witness should be credited; and in case there is any conflict in the testimony, it becomes your function to resolve the conflict and to determine what the fact was and where the truth lies.

186 If you find that any witness wilfully testified falsely as to any material fact concerning which the witness could not have reasonably been mistaken, you are then at liberty, if you deem it wise to do so, to disregard the entire testimony of that witness or any part of that witness' testimony.

In connection with weighing the testimony of witnesses, and determining

their credibility and trustworthiness, it has been shown in connection with several of the witnesses that have taken the witness stand that they have a criminal record. You have a right to take any fact into consideration, and that includes a criminal record, to determine whether the witness was a trustworthy witness, and in deciding and passing upon the witness' credibility.

You have a right to come to the conclusion, if you see fit to do so, that a witness with a criminal record is not entitled to the same credit as a witness whose record is unblemished.

One of the witnesses was the Defendant Walker, and it appeared that he had been convicted more than once of larceny, once of housebreaking, as well as a forgery and carrying a dangerous weapon. Now, the fact that he has been convicted of other crimes does not have any bearing on the question of guilt or innocence of the charges on which he is being tried, because those charges
187 have to be established by independent evidence. But you have a right to consider his criminal record in determining whether to believe the testimony that he gave on the witness stand, because, as I said before, you have a right to reach the conclusion, if you see fit to do so -- that is for you to determine -- that a person with a criminal record is not entitled to the same credit as a person with an unblemished record. That is the reason the law admits in evidence the criminal record of any person who testifies as a witness, in order to help the jury, and merely to help the jury determine to what extent that witness should be believed.

That brings me to the specific charges involved in this case. As I said to you before, the first count charges housebreaking, namely, entering the store of Jada, Inc., with intent to steal property.

Housebreaking is defined briefly in the District of Columbia Code, and I shall read to you the pertinent parts of the definition:

> "Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking any dwelling, bank, store, warehouse, or other building, or any apartment or room, with intent to commit any criminal offense, shall be punished by the penalty that the law prescribes."

188 The second count charges larceny, namely, that on the occasion of the housebreaking, the Defendants stole certain property from the store, including as I said before, cases of liquor, boxes of costume jewelry, cigarettes, and $281 in money.

Grand larceny is defined in the District of Columbia Code as follows:

"Whoever shall feloniously take and carry away anything of value of the amount or value of $100 or upward shall be punished by the penalty prescribed by the law."

The words, "feloniously take and carry away," mean that the property must have been taken unlawfully from the possession of another with the fraudulent intent to convert it to the use of the person taking the property.

If the property stolen is valued at less than $100, then the offense is petty larceny.

Now, I want to say concerning this matter that the evidence as to the value of the stolen liquor or costume jewelry and cigarettes was not entirely satisfactory, because while an inventory was taken the day after the crime was committed, or two days after, no prior inventory had been taken subsequent to the preceding March. We do have the testimony, however, that a considerable number of cases of liquor were stolen.

189 However, the witness Schrier, one of the two co-owners of the corporation and the store, testified positively that he counted the cash in the cash register the night before the robbery when the store was closed, and that there was $281 in money in the cash register, and that that money was gone the following morning.

If you accept that testimony, you have a right to find that the crime committed was grand larceny. If you have any reasonable doubt about it, you have a right to find that the crime committed was petty larceny.

There is one other principle of law to which I want to advert before passing on to a brief discussion of the evidence, and that is this: The law provides that if several persons act jointly each performing a part that results in the commission of a crime, all are equally guilty of the crime. It is not

necessary that each one should perform the entire crime.

For example, if a person drives an automobile to the place where the offense is committed, to make it possible for someone else to commit the offense, and he knows the purpose for which he is driving the car, he is guilty of the offense to the same extent as the person who actually commits the offense. Or, if a person is acting as a lookout, to use a common expression, while others are committing the offense, he also is a joint participant and is as guilty of the offense as those who actually performed the criminal act.

190 I am citing these merely by way of illustration of the principle that if several persons act jointly and each performs a part, and all of the parts together result in the commission of a crime, then all are equally guilty of that crime.

This brings me to a discussion of the evidence.

I had occasion to say to some of you in another case several weeks ago that in criminal cases there are two types of evidence. One type is known as direct evidence; and the other type of evidence is known as circumstantial evidence.

By direct evidence is meant evidence of eye witnesses who saw the act performed. By circumstantial evidence is meant evidence of circumstances from which the defendant's guilt may be inferred by the jury.

It cannot be properly said that one type of evidence is better than the other. For example, in the case of direct evidence, an eye witness may make a mistake in identifying the person whom he saw; his memory may be inaccurate; or he may intentionally fabricate a story.

Similarly, too, circumstances, if they are not sufficiently strong, might not lead unerringly to an inference. On the other hand, if the circumstantial evidence is sufficiently strong, it may on occasion be even more convincing than direct evidence because circumstances speak for themselves and may, if they are strong enough, irresistibly lead to a definite conclusion either of guilt or innocence.

The law permits conviction of a criminal offense on circumstantial evidence

alone if the jury is satisfied of the defendant's guilt beyond a reasonable doubt. This has to be so, because if direct evidence was necessary to convict, many crimes would go unpunished because, naturally, a criminal tries to commit any crime that he perpetrates in secret and not in the view of witnesses.

191 Now, I have referred to this matter because in this case the Government relies on circumstantial evidence.

This brings me to a brief summary of the evidence.

The two co-owners of the store -- that is, technically, the two co-owners of the corporation that owns the store -- David Jacobson and Jack Schrier, testified to the facts of the housebreaking.

They testified that on the evening of August 18, 1958, the store was closed by them, and locked; and on the following morning, when they arrived, the store was in disarray, a large quantity of liquor had been obviously stolen, as well as some jewelry and cigarettes, and $281 in money.

Jacobson also testified that on examining the building, he saw that entry was gained through the rear by taking out some cinderblocks from the wall. And, as I said before, Schrier testified that he counted the money in the cash

192 register the night before and that there was $281, and that that amount was missing.

The Government then offered testimony through Officer Veery of the Police Department that three days later some of the stolen property was found and recovered in a house at 458 K Street. Some of it was found in the cellar. One article was found under a mattress in one of the rooms. Some was found in a suitcase in the same room. Some were found in a trash can which, apparently, had been discarded.

The Government then offered evidence tending to show that the two Defendants in this case, George Washington and Ernest Walker, had brought this property from an automobile into this house and deposited it in a room occupied by another defendant. There was further testimony that later they carried some of the property out into their car and drove away with it.

Now, the principal testimony to that effect was given by Melvin Shippy,

the landlord of those premises, who testified that he observed all these matters.

In addition, testimony along the same line was given by Theresa Williams.

Now, it is the law, that if persons are found in possession of stolen property, that is, property that had been recently stolen, and give no satisfactory explanation of their possession, the jury has a right to infer from that cir-
193 cumstance that the persons in possession of the property were the thieves, and that circumstance alone, under the law, is sufficient to justify the jury in finding a verdict of guilty.

The jury doesn't have to infer guilt under those circumstances. It is for the jury to determine whether or not to do so. But the law is that the jury has a right to infer guilt from that circumstance, if it sees fit to do so and deems it wise to do so.

The Defendant Walker took the witness stand and denied any knowledge of or participation in this crime. It is for you to determine what the fact was and where the truth lies.

The Defendant Walker also called as a witness a woman by the name of Marjorie Streeter, who did testify, among other things, that she saw boxes in the car and that Walker and Washington were with her on that occasion.

Now, as I said before, my discussion of the evidence is not binding on you. You must reach your own decision on the evidence. That is your function and that is your responsibility. But in reaching a conclusion, you must use the same practical approach, the same ordinary common sense, the same ordinary intelligence that you would employ in deciding any other important matter that you have occasion to determine in the course of your everyday life.

194 You will render a separate verdict on each of the two counts as to Defendant George Washington and as to Defendant Ernest Walker. In other words, there will be four separate verdicts, two verdicts as to Washington and two verdicts as to Walker.

As to the first count, housebreaking, your verdict should be either, guilty, or, not guilty. As to the second count, your verdict may be either,

guilty as charged; or, if you are not satisfied with the proof of value, then it may be, guilty of petty larceny, or, not guilty.

As I said, you will find two verdicts as to each Defendant, so there will be four verdicts altogether. Of course, I need hardly remind you of the fact that your verdict must be reached by unamimous vote.

Are there any objections or suggestions?

MR. DOUGHERTY: No, thank you, Your Honor.

MR. WINSTON: No, sir.

MR. GOLDBERG: The defense is satisfied.

THE COURT: Ladies and gentlemen of the Jury, the twelve regular Jurors may now retire. Upon reaching the jury room, you will first select a foreman from amongst yourselves and then proceed to reach a verdict.

The twelve regular Jurors may follow the Marshal. I am going to ask the two alternates to retain their seats for a moment.

195 (Whereupon the Jury withdrew at 10:34 a. m.)

THE COURT: I want counsel to remain in the courtroom for a moment.

At this time, the Court wishes to thank the two alternate Jurors for their participation in this trial. This, gentlemen, concludes your services as jurors and you are excused permanently with the thanks of the Court.

The Court hopes that you found your service interesting. The average citizen sometimes hears about aspects of life while sitting on a jury concerning the existence of which he never was aware. But in any event, you bore a heavy responsibility during the past month; you performed an important function in the administration of justice; and you have a right to feel a sense of gratification at having fulfilled one of the most important duties of citizenship.

You are excused permanently and you may leave at any time. If either of you needs a certificate of your service, the Clerk will give it to you.

Will counsel please come to the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: Gentlemen, was this your first criminal case?

MR. WINSTON: Yes, sir.

MR. GOLDBERG: Yes, Your Honor.

196 THE COURT: You did very well, indeed. I don't think anybody could have done any more for your clients than you did.

MR. WINSTON: Thank you very much.

MR. GOLDBERG: I might say I have had a couple quasi-criminal actions, but never in the United States District Court.

(Whereupon Court recessed until the return of the Jury:)

(Whereupon at 12:21 p. m. Court reconvened and the Jury returned:)

THE COURT: You may proceed.

THE CLERK: Who is the foreman, please?

THE FOREMAN: I am.

THE CLERK: Mr. Foreman, what say you as to the Defendant George M. Washington on Count 1 of the indictment?

THE FOREMAN: Guilty as charged.

THE CLERK: And Count 2?

THE FOREMAN: Guilty as charged.

THE CLERK: What say you as to the Defendant Ernest Walker on Count 1 of the indictment?

THE FOREMAN: Guilty.

THE CLERK: On Count 2?

THE FOREMAN: Guilty as charged.

THE CLERK: Members of the Jury, your Foreman says you find the Defendant George M. Washington guilty as charged, and that you find the

197 Defendant Ernest Walker guilty as charged, and that is your verdict, so say you each and all?

(Whereupon the Jurors indicated assent.)

THE COURT: The case will be referred to the Probation Officer for the usual pre-sentence investigation.

Ladies and gentlemen of the Jury, the Court wishes to thank you for the time and attention you have given to this case.

This concludes your service as jurors at this term of Court, and you are discharged with the thanks of this Court. I hope that you have found your service interesting. Perhaps some of you have learned something about aspects of life that you may never have heard of before; but in any event, you have borne the heavy responsibility; you have participated in the administration of justice in an important way, and you have a right to feel a sense of satisfaction and gratification at having performed and fulfilled one of the most important duties of American citizenship.

I want to add one other observation. Some of you may recall when I talked to the entire panel before you started your service, I informed you that every defendant in a criminal case under our system of administering justice is entitled to be represented by counsel, and that if the defendant has no money to hire a lawyer, the Court will appoint a lawyer for him, who serves without any compensation whatsoever, just as a doctor does at a free clinic, for example.

198 Now, this is one of those cases. These two members of the Bar were assigned to defend these Defendants without compensation. I think you have observed they defended them both zealously and intelligently and ably. As I say, under our system, everyone is entitled to be represented by counsel and to be given a defense if he has one.

I thought before discharging you, you might be interested. You have had other cases where the same thing has happened, but I have always felt that as the cases went along, you should not be informed in any one case whether counsel have been hired by the defendant or have been appointed by the Court; but since this is your last case and you are about to terminate your services, I thought I might call your attention to this case as an example of what is being done under our system of administering justice.

You are excused from further service, and those of you who need them will receive certificates of your service before you leave.

(Whereupon at 12:25 p. m., the hearing was concluded.)

* * * * * * * * *

[Filed January 7, 1959]

On this 7th day of January, 1959, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the trial of which was respited yesterday; whereupon the said jury after hearing further of the evidence and instructions of the Court, alternate jurors are discharged from further consideration in this case. The jury retires to consider their verdict.

The jury returns into Court and upon their oath say that each defendant is guilty as indicted.

The cases are referred to the Probation Officer of the Court and the defendants are remanded to the District of Columbia Jail.

Present:
United States Attorney
By Wm. A. Dougherty
Assistant United States Attorney
Ida Watson
Official Reporter

By direction of
ALEXANDER HOLTZOFF
Presiding Judge
Criminal Court # 3
HARRY M. HULL, Clerk
By /s/ Irene B. Burroughs
Deputy Clerk

[Filed January 16, 1959]

MOTION TO SET ASIDE VERDICT AND DISMISS THE INDICTMENT IN CRIMINAL CASE NO. 863-58

I. Petitioner George M. Washington charges that he was denied due process and was illegal brought to trial in criminal case No. 863-58 charges stated below.

II. The Government and police denied petitioner George M. Washington due process of law by not showing probable cause, and by denieing petitioner George M. Washington a preliminary hearing before trial, in Criminal Case No. 863-58.

III. The Governmnt did not show probable cause and did violated the "6th Amendment of the Constitution" when they did not confronted petitioner George M. Washington with the witness which was used before the Grand

Jury to indict petitioner and which was used at petitioner's trial.

IV. The Government did not show cause for an indictment with any evidence nor a statement obtained from one Margie Stretrs, by the police. Said statement were presented to Grand Jury for petitioner's indictment and was not used at petitioner's trial.

V. The Government denied, and refuse petitioner George M. Washington due process of law by not allowing petitioner a preliminary hearing and neglected to confront petitioner with witness against him before trial. And petitioner contends, due to the fact he was not allowed a preliminary hearing forced petitioner to be absolutely defenseless during the entire procedures of his trial. Petitioner contends if he were allowed due process of law his conviction would be virtually impossible. Petitioner did not wave his preliminary hearing. Due to the fact he were never allowed to do so.

VI. The police nor the Government did not show any probable cause to bring said criminal case No. 863-58 before the Grand Jury against petitioner.

VII. The Government and police did refuse and neglected to arrange petitioner for a tremdous period of time. Which were (16) sixteen hours an neglected to produce any of said evidence.

Due to the foregoing petitioner prays that this Honorable Court grant this petition.

/s/ GEORGE M. WASHINGTON
Petitioner

Subscribed and Sworn to before me this 15th day of January, 1959.

/s/ J. E. OTTES
Notary Public

[Filed February 5, 1959]

MOTION TO SET ASIDE VERDICT AND GRANT NEW TRIAL

Comes now, the petitioner in said cause, George M. Washington do hereby prays that this Court considers the allegations that have been raised in this Motion within the cause of justice:

The police denied the petitioner due process of law and did violated the fourth (4th) and Sixth (6th) amendments of the Constitution of the United States when they arrested petitioner without a warrant at 7:45 p. m. November 11th, and refused to charge or state what specific charge they was holding him on and decline to grant petitioner the right to an attorney and neglected to arraign petitioner for a tremdous excessive period of time of sixteen (16) hours. This forced petitioner to be entirely defenseless, not knowing the nature of the accusation.

The case that the Government and police brought to trial against petitioner was without evidence and did not show and cause nor place petitioner at scene of said crime. The prosecution did not prove by any means that petitioner committed any crime whatsoever. The prosecution witness whom have confessed and testify accessory before and after the fact, these known accessorials, are known to petitioner as one Margie Streeters, Teresa Williams (alias) Teresa Munson in statement made to the police did not place petitioner at scene of the Jada Liquor Store located at 1129-4th St., S. W., Washington D. C. the place where the allege crime were to have been committed nor at the getaway car or in possession of any evidence obtained from one Clayton Jacobs, which were used as evidence against petitioner, at petitioner's trial.

The prosecution did not show any cause or evidence from another witness No. (1) one Co-owner David Jacobson who testified not to the indictment which read to be a true bill in the amount of $1,081.00 but the amount of $5981, which made said indictment not a true bill but a paper with petitioner's name not with evidence.

Due to the foregoing petitioner prays this Honorable Court will grant instant petition:

/s/ GEORGE M. WASHINGTON
Petitioner

CERTIFICATE OF SERVICE

I hereby solomly swear that a copy of the foregoing has been mailed to Oliver Gasche, U. S. Attorney for Wash. D. C. this 5th day of February.

/s/ GEORGE M. WASHINGTON
Petitioner

[Filed February 6, 1959]

MEMORANDUM IN SUPPORT OF MOTION FOR A NEW TRIAL

This is an application on behalf of the defendant George M. Washington for an order to set aside the verdict of conviction reached by the jury in the above entitled cause on January 7, 1959, and to grant said defendant a new trial.

POINT ONE

THE VERDICT WAS CONTRARY TO THE WEIGHT OF EVIDENCE

It will be recalled that the evidence consisted practically entirely of testimony of the witnesses David Jacobson, Jack Schreier, Officer Wesley, none of whom had ever seen the defendant George M. Washington prior to the date of the trial, and of the witnesses Melvin R. Shippey, Theresa Williams and Marjorie Streeter, all of whom testified that they knew the defendant George M. Washington only by sight. The testimony developed that A did this, B did that and C the other thing, but, except for Shippey's testimony that he saw the defendant George M. Washington carrying boxes from a car to the room on K Street and from the room to the car, noone testified any more than that the defendant George M. Washington was there. Anyone who knew the persons that are charged with the crime and happened to come along might also have been caught in the wholesale arrests that took place.

It will also be recalled that the testimony of Theresa Williams showed that she was intoxicated throughout the evening, so her testimony can be disregarded, as it certainly must have been by the jury. As for the testimony of Officer Wesley, it is to be noted that every bit of what he testified was hearsay, let in only because the witness Marjorie Streeter repudiated her statement. Reference to Officer Wesley's testimony will show a remarkable recollection of every detail of events in which he did not even participate, and which he recited without referring to any notes. Certainly the defendant George

M. Washington should not be connected with so many events simply because he was seen at the apartment, mind you, not at the scene of the crime.

POINT TWO

THE VARIANCE BETWEEN THE VALUE OF THE PROPERTY AS CHARGED IN THE INDICTMENT AND AS TESTIFIED TO BY THE OWNERS RAISES A DOUBT AS TO WHETHER THE SAME CRIME IS INVOLVED.

It will be recalled that an inventory had been taken within two days after the alleged crime was committed, and that the indictment, which was based at least in part upon testimony of the owners of the store given after the inventory was taken, alleged that the total value of the property taken including liquor, jewelry and cash was $1081. Yet the testimony of the owner Jacobson was that the value of the liquor alone was $5200, so that the total value of the property allegedly stolen was $5781. No attempt was made by the prosecution to explain this tremendous variance between the allegations and the proof, nor to amend the allegations to conform to the proof. It is submitted that the defendant George M. Washington should not stand convicted of a crime where there is such indefiniteness as to the value of what was allegedly stolen, especially since his connection with the crime, if any was committed, rests upon such tenuous evidence.

POINT THREE

THE JURORS REACHED THE ERRONEOUS CONCLUSION THAT THE DEFENDANTS HAD BROUGHT IN COUNSEL FROM NEW YORK TO DEFEND THEM BECAUSE OF THE FAILURE TO DISCLOSE THAT COUNSEL WERE COURT APPOINTED AND BECAUSE OF A STATEMENT MADE DURING THE COURSE OF A BENCH CONFERENCE WHICH WAS OVERHEARD BY THE JURY, ALL TO THE PREJUDICE OF THE DEFENDANTS.

It is with hesitation that the attorneys for the defendants bring up the matter of an erroneous conclusion at which the jurors arrived, especially in view of the Court's prohibition against the submission of any affidavit as to what the jury heard or what may have transpired in the jury room, but counsel for the defendants feel that, especially since they have been court appointed, they must make every legal point that could possibly assist the defendants. This

is especially true in view of recent decisions granting new trials upon the ground of inadequate representation by court appointed attorneys. Counsel here feel that they owe it to their clients, to the court and to themselves to avoid the possibility of their being accused of not having raised every legal point available to the defense of the defendants.

It will be recalled that counsel for the defendant George M. Washington approached the bench prior to his summation to the jury and asked the Court whether there was any objection to telling the jury that counsel for both defendants were court appointed and were not being paid for their services. The Court prohibited counsel from so advising the jury, but did apprise the jury of these facts at the time the jury were being discharged after they had rendered their verdict. As the jury were filing out, one of the jurymen approached counsel for the defendants without any solicitation from counsel and stated that he wished the jury had known of the fact that counsel for the defendants were not being paid for their services. He stated that they had overheard a bench conference when, in answer to the Court's query as to where he had previously practiced law, counsel for the defendant George M. Washington stated that he had practiced in New York. The juror told counsel for the defendants that, unaware that the defendants were being defended by court appointed counsel who were serving without compensation, the jurors wondered how the defendants, apparently in poor circumstances, could afford to retain counsel from New York to defend them, and reached the conclusion that they had obtained money in some illegal manner, thus raising an erroneous inference of guilt.

It is submitted that, by an unfortunate sequence of events, the jury was badly mislead, to the prejudice of the rights of the defendants, and that the defendants are entitled to have the verdict set aside. By reason of the Court's statement to counsel when the motion to set aside the verdict was made on January 23, 1959, that the Court would not accept an affidavit from any juror and prohibiting counsel from tendering any such affidavit, counsel have not sought to obtain an affidavit from the juror who approached them. However,

in view of the decision of the Court of Appeals for the District of Columbia Circuit, rendered January 29, 1959, in the case of Klimes v. United States, counsel feels that it is their duty, in consonance with a proper defense of their clients, to request the Court's permission to seek to obtain such an affidavit. As the Court of Appeals stated in its opinion, almost without exception, where courts have declared a juror's affidavit or testimony as inadmissible, the court has considered the statement but rejected it as insufficient. The Court of Appeals has thus in effect held that there is ordinarily nothing improper about obtaining such an affidavit and that if the posture of the case warrants it, the trial court should consider it.

Counsel for both defendants feel that it appears that the jurors were motivated in reaching their verdict by facts which should not have been considered by them for that purpose as not relevant or material to the issue of guilt.

CONCLUSION

The Jury's verdict should be set aside and the case set down for a new trial.

Respectfully submitted,

/s/ HAROLD L. WINSTON

Harold L. Winston
Attorney for Defendant
George M. Washington
Transportation Building
Washington 6, D. C.

[Filed February 6, 1959]

On this 6th day of February, 1959, came the attorney of the United States, the defendants in proper person and by their counsel, Harold L. Winston and Max M. Goldberg, Esquire respectively; whereupon each defendant's motion for a new trial coming on to be heard, after argument, was by the Court denied. Whereupon defendant George M. Washington's motion to set aside the verdict and dismiss the indictment coming on to be heard, after argument, is by the Court denied.

Present:

United States Attorney

By Wm. Dougherty

Assistant United States Attorney

Byrholdt
Official Reporter

By direction of

ALEXANDER HOLTZOFF

Presiding Judge
Criminal Court # 6

HARRY M. HULL, Clerk

By (Illegible)
Deputy Clerk

[Filed February 10, 1959]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO PROCEED WITHOUT PREPAYMENT OF COSTS

I, George M. Washington, being first duly sworn according to law, depose and say that I am the defendant in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.
2. That because of my poverty I am unable to pay the costs of said suit or action.
3. That I am unable to give security for the same.
4. That I believe I am entitled to the redress I seek in said suit or action.
5. That the nature of my cause of action is briefly stated as follows:

/s/ GEORGE M. WASHINGTON

SUBSCRIBED and SWORN to before me this 9th day of February, 1959.

/s/ J. E. OTTES

Notary Public, D. C.

Let the applicant proceed without prepayment of costs, (handwritten:) on appeal.

/s/ ALEXANDER HOLTZOFF
JUDGE

[Filed February 10, 1959]

NOTICE OF APPEAL

Name and address of appellant - George M. Washington, DCDC #347
200 - 19th St., S. E. Washington D. C.

Name and address of appellant's attorney - None

Offense - House-breaking and Grand Larceny

Concise statement of judgment or order, giving date, and any sentence -
Found guilty by jury Jan 8, 1959, sentenced to concurrent terms of four to twelve years, and three to nine years on 2/6/59.

Name of institution where now confined, if not on bail (Blank)

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

/s/ GEORGE M. WASHINGTON
Appellant

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14963

739

GEORGE WASHINGTON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OLIVER GASCH,
United States Attorney.
CARL W. BELCHER,
NATHAN J. PAULSON,
Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit
FILED JUN 19 1959
Joseph W. Stewart
CLERK

QUESTION PRESENTED

In the opinion of the appellee the following questions are presented:

(1) Whether the Government proved a prima facie case of housebreaking and larceny where the court instructed on aiding and abetting and possession of recently stolen property?

(2) Whether the trial court properly denied a motion for a new trial where a juror allegedly overheard part of a discussion at a bench conference?

(3) Whether upon cross-examination of a Government witness, appellant may cross-examine as to grand jury testimony where no proper foundation has been laid?

(4) Does the case of *Jencks* v. *United States* pertain generally to grand jury minutes and particularly where there is an exclusionary rule contained in F.R. Cr. P.?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14963

GEORGE WASHINGTON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On September 29, 1958, there was filed in the District Court a two count indictment charging appellant and his co-defendant, Ernest Walker, with violations of 22 D.C.C. 1801, 2201, 2202 (housebreaking and larceny). On November 21, 1958, he entered a plea of not guilty and on January 7, 1959, he was found guilty as charged. On January 16, 1959, he filed a motion, *pro se*, to set aside the verdict and to dismiss the indictment. On February 5, 1959, a motion to set aside the verdict and to grant a new trial (J.A. 89) was filed. On February 6, 1959, after argument, his motion for a new trial and to set aside the verdict was denied (J.A. 94). On the same day, he was sentenced to a term of imprisonment for a period of from four years to twelve years on count one and from three years to nine years on count two, said sentences to run concurrently. This appeal followed (J.A. 96).

David Jacobson testified that he was co-owner with Jack Schrier in the drug and liquor store known as Jada, Inc., located

in the District of Columbia (J.A. 5); that on August 19, 1958, at 9:45 a.m. when he opened the store he noticed that the entire establishment was in a state of disarray; that the cash registers were empty (J.A. 5); that cinder blocks had been "knocked out" of the building in order to permit entry to and from the street and that a good deal of the stock was missing (whiskey, jewelry and cigarettes) (J.A. 6). He testified further that he had not given anyone permission to take his property (J.A. 6); that the Alcoholic Beverage Control Board for the District of Columbia, when issuing a license to a package liquor store, designated such store by number [1] and that such number is stamped upon each bottle of whiskey that comes into the store (J.A. 7). He then identified the Government's exhibits (J.A. 7a, 7b).

Jack Schrier testified that he was a co-owner of the store (J.A. 18) and that after a personal inventory he discovered that $281 in cash had been stolen from the premises (J.A. 20). He corroborated his partner regarding the whiskey and jewelry.

Melvin R. Shippy testified that on August 19, 1958, upon returning home in the very early hours of the morning he saw appellant carrying whiskey from a car into the house identified as 458 K Street N.W. This was also the home of the co-defendant (J.A. 71). He also saw appellant and the co-defendant then almost immediately bring whiskey from the house to the car (J.A. 7m). He identified the whiskey as pints of Seagrams Seven and Kentucky Gentlemen as being contained in a case (J.A. 7m). He saw appellant and the co-defendant go into one Clinton Jacobs' room (J.A. 7m) and while he was standing just outside the window of that room he heard conversation (J.A. 7n). About five minutes thereafter they left the room, returned to the car and drove off (J.A. 7n). He then identified Government's Exhibit 1 as a bottle that was thrown to the outside from that room in the early hours of the morning. A stamp numbered 9594 was on the bottle (J.A. 7n). He later gave this bottle to the police detective (J.A. 7o). He identified Government's Exhibit No. 2 as material that came out from under the bed mattress in Jacobs' room (J.A. 7o). This room was also the room where the co-defendant Walker stayed (J.A.

[1] His store number was 9594 (J.A. 7).

7o). He identified Exhibit No. 3 as material which came from "out in the trash" in the backyard (J.A. 7o); Exhibit No. 4 as material that was in the room (J.A. 7p) and Exhibit No. 5 as material which was in a suitcase under the bed in that room (J.A. 7p). In response to a question by the court as to how the witness had seen all these objects, he replied that he saw them when the detectives were there (J.A. 7p).

Upon cross-examination he remained firm in his stand that appellant had carried something in and out of the house. It was in this posture of the case that appellant's counsel asked the witness, "Have you ever been convicted of a crime?" (J.A. 7q), which immediately caused the court to request counsel to come to the Bench. When it developed that counsel had formerly practiced law in New York the trial judge advised him that although in that jurisdiction witnesses could be questioned as to prior convictions without facts in support thereof, it could not be done here (J.A. 7q, 7r). Cross-examination disclosed that the co-defendant Walker lived in Room 1 with one Clinton Jacobs (J.A. 7s) and that he heard the defendants state that the cases contained whiskey (J.A. 7t).

Police Officer Verrier testified that on August 21, 1958 he went to 458 K Street NW. and talked to Mr. Shippy (J.A. 7u); that as a result of a conversation he went to the rear of 458 K Street and looked in some trash cans. He identified Government Exhibit No. 1 as the bottle that Mr. Shippy had given him and which bore stamp No. 9594 (J.A. 7v); Exhibit No. 2 as a jewelry box that was under the mattress in the front room of the premises; Exhibits Nos. 3 and 4 as boxes with a tag found in the trash can in the rear of 458 K Street and Exhibit No. 5 as stamps bearing No. 9594 which were found in a green suitcase in the front room of the premises. These were Alcoholic Beverage Control Board stamps (J.A. 7w). He stated that at the time he was in the room and found the exhibits that neither appellant (J.A. 7w) nor the co-defendant (J.A. 7x) were present.

Theresa Williams[2] testified that on August 18, 1958, at about 10:30 in the evening she left her mother's house and re-

[2] She stated she was also known as Mrs. Munson (J.A. 14).

turned to her own home at 452 M Street SW.;[3] that one Jr. Walker returned to her house with her; that when she returned home she went to sleep and Jr. Walker and others "went out" (J.A. 9); that Walker returned and called her and Margie advising them that "[they were] going to take a ride" (J.A. 9); that she and Margie went downstairs to a car which was parked across the street and "got into the car" (J.A. 10); that Leroy was in the car along with "a lot of boxes" (J.A. 10); that appellant was in her house that night (J.A. 11) and that "he came up there in the cab, him and my old man, behind us, to this house where we went with these boxes" (J.A. 11). She stated that she went uptown to some street but did not know which street it was (J.A. 11) and that when they arrived at their destination she was sick; that she entered the house, proceeded to the bathroom and when she returned therefrom the boxes were in the room. (J.A. 11.) She identified appellant as a person who was also in that room. She did not know what was in the boxes (J.A. 12). Upon cross-examination she repeated that appellant had been at her house (J.A. 13); that the type of car she had "got into" was light gray and that only four persons could get in "because so many boxes [were] in there" (J.A. 15).

Marjorie Janice Streeter testifying in behalf of co-defendant Walker stated that on August 18, 1958, she and the co-defendant had gone to Theresa Williams' house to visit Paul and Theresa Munson; that shortly after they arrived they sat around with them talking and having a few drinks between 5 and 6:30 p.m. She stated that while they were there appellant and his brother Leroy came down and joined the group. She stated that she remained at that address with the co-defendant through approximately 12 o'clock, but that from 6:30 to midnight she would doze off into sleep (J.A. 24); that there came a time that appellant and his brother and two companions left the apartment and that subsequent thereto all of them left the apartment (J.A. 25) and proceeded to 458 K Street NW. (J.A. 25). They went in appellant's brother's car which was driven by the brother and that it was an old gray car (J.A. 25). She testified that there were some boxes in the

[3] This was across the street from the scene of the crime.

back of the car; that she opened one of the boxes and knew there were bottles in the box but that she couldn't see what it was and that the co-defendant advised her what was in the boxes was none of her business (J.A. 26). When she arrived at 458 K Street NW., she "had to get out of the car because they wanted to take the boxes out of the car" (J.A. 26). She waited in the car for appellant's brother to come take them home, and after a while, he not having come, they walked into 458 K Street as far as the hall, heard what sounded like an argument and did not go inside the room because the co-defendant told her "he didn't want to get mixed up in it" (J.A. 26 and 27). Appellant's brother then came out, went back in the car and proceeded to the witness' mother's house (J.A. 27).

Upon cross-examination the witness was asked concerning her testimony before the grand jury (J.A. 27). The co-defendant's counsel requested a copy of the transcript of such testimony prior to the witnesses testimony. This was denied (J.A. 28). The testimony under proper questioning reflected that the witness had testified that the car had been full of whiskey and jewelry; that the persons involved "had some change" which they divided up (J.A. 28). Counsel for the co-defendant requested a copy of the transcript again and was advised by the court that he could receive such testimony after cross-examination. The cross-examination continued, disclosing that Paul Munson and one Jacobs had arrived in the Northwest address by taxicab and after they arrived, the whiskey and money was split up (J.A. 29). At that time a signed statement and a copy of the transcript before the grand jury was given to defense counsel (J.A. 30). The witness then testified under re-direct examination that a statement that she had made at the No. 4 precinct and her testimony before the grand jury had been made under duress (J.A. 30, 31). Upon re-cross-examination the witness stated that she had been asked whether she had made the statement of her own free will and that she had answered yes; that she had been advised that she did not have to testify before the grand jury as part of her constitutional rights (J.A. 35), and that in response to the question "and you wish to testify, is that correct?" she had

answered yes (J.A. 35, 36). The co-defendant then testified in his own behalf and denied any connection with the crime. He admitted that on the evening of the crime he visited the Munsons at 452 M Street SW.; that he was in the company there with appellant and others; and that he left and proceeded to 458 K Street NW. (J.A. 37). He admitted to having been previously convicted for petit larceny, carrying a dangerous weapon, forgery, housebreaking and larceny (J.A. 38). Appellant then rested (J.A. 40).

In rebuttal, Henry H. Wesley, a member of the Metropolitan Police Department assigned to the 4th precinct testified that Marjorie Streeter had talked to him in the precinct and of her own free will had made the statement hereintofore referred to (J.A. 44). He further testified that she stated to him that after she went to the house of Theresa Williams they were joined by appellant and his brother; that all the men went to another room, talked for a while, came out and left, returned shortly, picked up some packages and left again (J.A. 46). That they returned several hours later and told Miss Streeter and Theresa Williams to come with them because they were going up to Northwest (J.A. 46). They all proceeded across the street to where a car was parked, which car was owned by one of the Washington "boys" and told them to get in the car but that when she tried to get in the car, it was so full of boxes she couldn't get in. The men moved the boxes around and she opened one of them. She said it was whiskey. When they arrived in Northwest they unloaded the whiskey and took it into the house. They all went in and had a drink. They had "lots of money"; and divided some of the money and jewelry (J.A. 46). After making her statement, she was taken upstairs in the precinct where she "talked to" Munson (J.A. 47). A request for an instruction that possession is not "indicative of the housebreaking" was denied (J.A. 51). Clinton Jacobs took the stand and testified that the co-defendant had nothing to do with the crime (J.A. 56, 57). He admitted that he had been previously convicted of unauthorized use of a vehicle, of housebreaking, of assault and battery, and of carrying a dangerous weapon (J.A. 57, 58). Renewal of motions to dismiss were made and denied.

The court then instructed the jury to which there were no objections (J.A. 85).

STATUTES INVOLVED

Title 22, District of Columbia Code, § 1801 provides:

> *Definition and penalty.* Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years.

Title 22, District of Columbia Code, § 2201 provides:

> *Grand larceny.* Whoever shall feloniously take and carry away anything of value of the amount or value of $50 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

Title 22, District of Columbia Code, § 2202 provides:

> *Petit larceny—Order of restitution.* Whoever shall feloniously take and carry away any property of value of less than $50, including things savoring of the realty, shall be fined not more than $200 or be imprisoned for not more than one year, or both. And in all convictions for larceny, either grand or petit, the trial justice may, in his sound discretion, order restitution to be made of the value of the money or property shown to have been stolen by the defendant and made way with or otherwise disposed of and not recovered.

SUMMARY OF ARGUMENT

The Government established sufficient facts to warrant the trial judge to submit the case to the jury under the rule established in *Curley* v. *United States*, 81 U.S. App. D.C. 389, 160 F. 2d 229 (1947), *cert. denied*, 331 U.S. 187.

The court's instructions upon possession of recently stolen property and aiding and abetting in conjunction with the balance of the charge, were clear.

The fact that a juror inadvertently overheard a remark at a bench conference which was not inflammatory, illegal, nor made with intent to deceive is not sufficient to impeach his verdict. Matters which inhere in the verdict are insufficient to warrant the granting of a new trial.

Neither the rationale of *Jencks* v. *United States*, 353 U.S. 657, nor the new statute, require that the trial court permit cross-examination of a government witness regarding his testimony before the grand jury. This is particularly so where no proper foundation is laid and where there is an exclusionary rule.

ARGUMENTS

There was sufficient evidence to support the verdict

The record discloses that appellant's conviction was predicated upon both direct and circumstantial evidence. The rule in this jurisdiction regarding circumstantial evidence was stated in *Curley* v. *United States*, 81 U.S. App. D.C. 389, 16 F. 2d 229 (1947), *cert. denied*, 331 U.S. 837, *rehearing denied*, 331 U.S. 869. There this Court said:

> * * * The true rule, therefore, is that a trial judge, in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it in another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reason-

> able doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter. * * * But if a reasonable mind might fairly have a reasonable doubt or might not fairly have one, the case is for the jury, and the decision is for the jurors to make.

We submit that the facts in this case when considered under the rules set forth above clearly permitted the trial court to submit the case to the jury. There was sufficient testimony and evidence from which the jury could clearly infer that appellants had participated in this crime of housebreaking and larceny.

The corpus was clearly proved by the testimony of Jacobson and Schrier. There is no dispute that a crime had been committed in the drug and liquor store and that whiskey, jewelry, and money had been taken from the premises.

Melvin R. Shippy testified that in the very early hours of the morning of August 19, 1958, he saw appellant carrying whiskey from a car into a house identified at 453 K Street NW. This was also the home of the co-defendant. During these critical hours he also saw appellant and the co-defendant each bring a case of whiskey from the house to the car. After identifying the whiskey by brand name, he stated he saw appellant and co-defendant enter Clinton Jacobs' room and while he was standing just outside the window of that room he heard a conversation. Five minutes thereafter, they left the room, returned to the car and drove off. He testified that a whiskey bottle with the stamp number 9594 [4] was thrown to the outside from that room in the early hours of the morning. He also identified various government exhibits which were recovered from the trash and from Jacob's room.

The testimony of police officer Verrier corroborated the testimony of Mr. Shippy as to the recovery of the various exhibits. Witness Williams testimony placed appellant in her house at the night of the crime. She and another girl went out to a

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[4] This is the number assigned to the premises broken into, by the ABC Board.

car parked across the street [5] in which there were a lot of boxes. Appellant, and her husband [6] came up from that area to 458 K Street in a taxicab and that the boxes were then taken into the house. She identified appellant as a person who was in the room to which the boxes had been taken and that the car she had gotten into was light gray.

Margery Streeter testifying in behalf of the co-defendant placed appellant in Williams' home stating that he and his brother and two companions left the apartment at one point and that there were boxes in the back of the car in which they all proceeded to the address in Northwest. Upon cross-examination she stated that boxes contained whiskey and that money was divided between the various men.

Co-defendant Walker testified that on the evening of the crime, he visited the Munsons at 452 M Street SW.; that he was in the company there with appellant and others; that he left and proceeded to 458 K Street NW. (J.A. 37).

All this testimony clearly indicates that appellant by time, place and circumstance and identification, was in recent possession of fruits of a crime. Unless satisfactorily explained by appellant the recent possession of the stolen goods is sufficient to justifiable conviction for housebreaking and larceny. *Edwards* v. *United States*, 78 U.S. App. 226, 229, 139 F. 2d 365 (1944), *cert. denied*, 321 U.S. 769; *Tractenberg* v. *United States*, 53 App. D.C. 396, 293 F. 46 (1923); *Christensen* v. *United States*, 259 F. 2d 192 (1958); *cf. Considine* v. *United States*, 112 F. 342, 349–50, *cert. den.* 184 U.S. 699 (1902); *McNamara* v. *Henkel*, 226 U.S. 520, 524, 525 (1913); *Urlam* v. *United States*, 162 U.S. 613, 619 (1896). Appellant chose not to testify on his own behalf, nor did he submit any evidence tending to explain the events.

II

The Court committed no error by denying the appellant's motion for a new trial

Appellant contends that the jury's verdict should be impeached because the foreman of the jury wrote his attorney

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[5] This was close by the premises where the crime was committed.

[6] She testified she was known as Mrs. Munson.

after the trial that he had heard a remark made at the bench conference "In regard to Mr. Winston having been from New York". After stating that he had "began to wonder just how these men could afford to hire a lawyer from New York." "[He] felt that at least, [his] thinking had not been clear in arriving at a verdict in this case; and [he wished] to say that had it not been for the remark made at the bench, [he] and perhaps others on the jury would have noted [sic] differently." This contention is without merit. It may well be equated with a situation where the most prominent criminal lawyer in this jurisdiction was Court appointed to a case. A similar state of mind as claimed here could result in the question: How could a defendant afford him unless he was guilty? Could it be said that in the hypothetical case the verdict should be impeached. The instructions were clear as to the jury's responsibility and appellant does not attack them on this score.

A juror may not impeach his own verdict, and even where misconduct is alleged, and none is here, if it pertains to a matter inherent in the verdict, the affidavit of a juror will not be received, for grave policy reasons, to establish it. *McDonald* v. *Pless*, 238 U.S. 264 (1915); *Hyde* v. *United States*, 169 F. 2d 739 (4th Cir.), *cert. denied*, 335 U.S. 826 (1948). As was stated in *Holt* v. *United States*, 218 U.S. 245:

> If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day. Without intimating that the judge would not go further than we should think desirable on general principles, we do not see in the facts before us any conclusive ground for saying that his expressed beliefs that the trial was fair and that the prisoner has nothing to complain of is wrong.

The trial court in its discretion denied appellant's motion for a new trial and we submit that in that posture of the case when the juror allegedly overheard remarks made at a bench conference there was fundamentally no illegal, corrupt or inflammatory influence in law to warrant an impeachment of the ver-

dict. The court's instructions sufficiently advised the jury that the facts of the case were the determining factor for their decision.

III

Neither *Jencks* v. *United States*, 353 U.S. 657, nor the existing statute pertaining to the same, apply to grand jury minutes

During cross-examination of Mr. Jacobson, counsel for appellant asked whether the witness had testified before the grand jury. The witness was permitted to answer the question. At a bench conference, the court informed counsel that it would not permit counsel to interrogate the witness as to any of his testimony before the grand jury. Subsequently, when witness Streeter was testifying for the co-defendant, the Government sought to impeach her testimony by disclosing that she had testified under oath differently before the grand jury. A copy of her testimony before the grand jury was given to appellant after her cross-examination. In *Jencks* v. *United States, supra*, the Supreme Court states (p. 667):

> For production purposes, it need not only appear that the evidence is relative, competent and outside of any exclusionary rule.

This quotation referred to the principle set forth in *Gordon* v. *United States*, 344 U.S. 414. We submit, that in the instant case, not only was there no relevancy but that grand jury minutes fall within an exclusionary rule; namely, Rule 6, F.R. Cr. P. which provides in part as follows:

> (e) Secrecy of Proceedings and Disclosure. Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand

> jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

Here when the bench conference took place, no relevancy was made known to the court with any showing that there were grounds existing for a motion to dismiss the indictment because of matters occurring before the grand jury. It is apparent from the line of questioning that appellant was attempting to attack the credibility of the witness by a disclosure of a collateral matter involving the amount of whiskey that was stolen. This does not pertain to the housebreaking, but, at most, would merely pertain to the degree of larceny in the other count. This, in the light of the testimony that the cash register were emptied of $281 (J.A. 7f) became immaterial.

Furthermore, the legislative history[7] of the recent act discloses the following:

> The purpose of the proposed legislation is to amend Chapter 223, Title 18, United States Code, to provide the exclusive procedure for handling demands for the production of statements and reports of witnesses.
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> * * * * *
>
> In other words, it is the specific intent of the bill to provide for the production only of written statements previously made by a Government witness in the possession of the United States which are signed by him or otherwise adopted or approved by him, and any transcriptions or recordings of oral statements made by a witness to a Federal law officer, relating to the matter as to which the witness has testified. The committee rejects therefore, any interpretations of the Jencks decision which would provide for the production of entire

[7] U.S. Code Cong. and Admr. News, 1957, p. 1861 et seq.

investigative files, grand jury testimony or similar materials.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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